

**Indigo Secured High Income Note, Ltd. v Nitsberg**

2025 NY Slip Op 34538(U)

November 24, 2025

Supreme Court, New York County

Docket Number: Index No. 655475/2024

Judge: Arthur F. Engoron

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

<b>PRESENT:</b> <u>HON. ARTHUR F. ENGORON</u>	<b>PART</b>	<b>37</b>
<i>Justice</i>		
-----X	<b>INDEX NO.</b>	<u>655475/2024</u>
INDIGO SECURED HIGH INCOME NOTE, LTD.,	<b>MOTION DATE</b>	<u>09/10/2025</u>
Plaintiff,	<b>MOTION SEQ. NO.</b>	<u>002</u>
- v -		
STEVEN NITSBERG,	<b>DECISION + ORDER ON MOTION</b>	
Defendant.		

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, and for the reasons stated herein below, defendant's motion is denied, and plaintiff's cross-motion is granted.

**Background**

Plaintiff, Indigo Secured High Income Note, LTD., is a foreign corporation formed in the Bahamas, that has not been in good standing in the Bahamas since April 23, 2023, when it was "struck off" the "Registry" with the Bahamian Registrar General's Department. NYSCEF Doc. No. 11. Whether plaintiff is a dissolved corporation is in dispute between the parties.

On October 16, 2024, pursuant to CPLR 3213 and CPLR 5014, plaintiff commenced this action for summary judgement in lieu of complaint, seeking to renew a \$42,564,205.29 judgment against defendant, Steven Nitsberg, from the action entitled Indigo Secured High Income Note, Ltd. V HCI Secured Medical Receivables Special Purpose Corporation, a New York Corporation et al, (Index No. 650487/2013), from Supreme Court, New York County. NYSCEF Doc. No. 2. The "underlying judgment" was entered on February 27, 2015. NYSCEF Doc. No. 4. In a February 19, 2025, Decision and Order, this Court found that plaintiff failed to establish a prima face entitlement to a renewal judgment and denied plaintiff's motion accordingly. NYSCEF Doc. No. 16. Plaintiff's moving papers had lacked any proof that the underlying judgment remained unsatisfied. Id.

On September 5, 2025, defendant moved, pursuant to CPLR 3212, in lieu of an answer, for summary judgment, contending that plaintiff lacked the capacity to sue at the time it commenced this action. NYSCEF Doc. No. 17.

In support of the motion, defendant contends, inter alia, that as plaintiff was formed in the Bahamas, this Court should apply Bahamian law to determine whether the instant action, brought by an allegedly dissolved corporation, is viable. NYSCEF Doc. No. 18. Defendant cites the Bahamas International Business Companies Act ("IBC") § 167(2)(c) for the proposition that while a company stricken from the Registry may "continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of strike off[,]" a company does not have authority to commence a new legal proceeding after

it has been struck off. Id. Defendant notes that plaintiff was stricken from the Registry on April 21, 2023, prior to the commencement of the instant action, and argues that therefore, plaintiff lacked the capacity to sue at the time this action was commenced. NYSCEF Doc. No. 18.

On September 15, 2025, plaintiff filed a cross-motion for summary judgment, seeking to renew the underlying money judgment. NYSCEF Doc. No. 22.

In support of the cross-motion and opposition of defendant's motion, plaintiff cites, inter alia, BCL § 1301(b)(1) for the proposition that foreign corporations may maintain suit to enforce a judgment. NYSCEF Doc. No. 23. Additionally, plaintiff cites IBC § 169(1) which states that "[if the name of a company has been struck off the Register under section 165(3) and remains struck off continuously for a period of 5 years, the company shall be deemed to have been dissolved." Plaintiff notes that pursuant to the IBC, it has not yet been dissolved. NYSCEF Doc. No. 23.

Plaintiff notes, regardless of whether it is dissolved, that under "Bahamian law, like New York law," pursuant to IBC § 167(2)(c), a company may "expressly continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off." Id.

Plaintiff cites BCL § 1006(b), which reads in part, "[t]he dissolution of a corporation shall not affect any remedy available to or against such corporation, its directors, officers or shareholders for any right or claim existing or any liability incurred before such dissolution." Countering defendant's argument that this is a brand-new action, plaintiff asserts that "the relief sought here is merely a renewal of a preexisting judgment that was undisputedly docketed long before plaintiff was stricken from the [R]egistry." NYSCEF Doc. No. 23.

In an effort to cure the lack of proof of non-payment of the underlying judgment in plaintiff's prior motion, plaintiff submits an affirmation from Gabriel Mendelberg, an attorney for plaintiff, attesting that based on his "communications" with shareholders of plaintiff, that to his knowledge "plaintiff has not received or recovered any money towards satisfaction of the [underlying] judgment, and thus, the entire [j]udgment amount remains outstanding with post-judgment interest that continues to accrue." NYSCEF Doc. No. 24.

In opposition to plaintiff's cross-motion, defendant contends, inter alia, that plaintiff confuses the issues of dissolution and capacity in the IBC, noting that under the IBC, a company cannot commence legal proceedings if it has been stricken from the Registry. NYSCEF Doc. No. 26. Additionally, defendant contends that plaintiff's affirmation from Mr. Mendelberg, inter alia, is insufficient as it "fails to identify anyone authorized to act on [plaintiff's] behalf[.]" and lacks personal knowledge of non-payment. Id.

### Discussion

As a preliminary matter, pursuant to CPLR 3213, this Court deems plaintiff's moving papers from its prior motion to be the complaint, converting the instant action into a conventional action. Accordingly, defendant's motion for summary judgment functions in lieu of an answer.

### General Principles

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985). Once that burden is met, the opponent must tender evidence in admissible form "sufficient to require a trial of material questions of fact on which he rests his claim ...mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." Zuckerman v City of New York, 49 NY2d 447, 562 (1980).

### Defendant's Motion

"It is well settled that New York applies the law of the place of the foreign corporation's creation when determining whether an action by or against a dissolved corporation is viable." Hedman Resources Ltd. v Occidental Chem. Corp., 83 Misc 3d 1294(A) (Sup Ct, Niagara County 2024) citing Brenon v Asbestos Corp., Ltd., 188 AD3d 1610 (4th Dept. 2020). Here, it is undisputed that plaintiff was incorporated under the laws of the Bahamas.

Pursuant to IBC § 169(1), plaintiff is correct that it is not yet considered to be a dissolved corporation because the striking off was less than five years ago. As defendant points out, IBC § 167(2)(c) states that a company does not have authority to commence a new legal proceeding after it has been "struck off[.]" regardless of whether it is considered dissolved. However, pursuant to IBC § 167(2)(c), a company may "expressly continue to carry on legal proceedings that were instituted on behalf of the company prior to the date of striking-off."

Therefore, the question becomes, pursuant to New York law, whether plaintiff's commencement of the instant action for a renewal judgment is a new action or a continuation of an action.

Defendant cites Guerra v Crescent St. Corp., 120 AD3d 754, 755-56 (2d Dept. 2014), for the proposition that an action to renew a judgment is a "new action." However, in Guerra, the court addressed a lien against real property, which it called a "new action[.]" but that is not like the case here, in which plaintiff is attempting to renew an existing money judgment.

This Court finds that defendant fails to demonstrate prima facie entitlement to summary judgment, as defendant's argument that plaintiff does not have legal capacity to maintain this action is without merit. The instant action and the underlying judgment are part of the same litigation, as they center on the same facts. This litigation was first commenced in 2013, ten years prior to when plaintiff was struck off the Registry in 2023.

This Court has considered defendant's other arguments and finds them to be unavailing and/or non-dispositive. Thus, defendant's motion for summary judgment must be denied.

### Plaintiff's Cross-Motion

Pursuant to CPLR 5014, to establish prima facie entitlement to a renewal judgment, a plaintiff must show: "(1) the existence of the underlying judgment; (2) that the defendant was a judgment debtor; (3) that the underlying judgment was docketed at least nine years prior to the commencement of this action; and (4) that the underlying judgment remained partially or completely unsatisfied." Lull v Van Tassell, 171 AD3d 1155, 1156 (2d Dept. 2019).

Here, plaintiff has established prima facie entitlement to summary judgment and a renewal judgment, pursuant to CPLR 3212 and CPLR 5014, by submitting, inter alia: the underlying judgment (NYSCEF Doc. No. 4), which evidences that defendant is a judgment debtor and that the underlying judgment was docketed nine years prior to the commencement of this action, and an affirmation of plaintiff's attorney, Gabriel Mendelberg, that the underlying judgment remains completely unsatisfied (NYSCEF Doc. No. 24).


While defendant contends that plaintiff's proof of nonpayment of the underlying judgment is insufficient, defendant does not dispute plaintiff's claim that the underlying judgment has not been satisfied. Factual assertions not controverted in responsive papers are deemed admitted. Kuehne & Nagel v Baiden, 36 NY2d 539, 544 (1975).

This Court has considered defendant's other arguments and finds them to be unavailing and/or non-dispositive.

Thus, plaintiff's cross-motion should be granted, as plaintiff is entitled to a renewal judgment.

**Conclusion**

Thus, the motion of defendant, Steven Nitsberg, for summary judgment is hereby denied; the cross-motion of plaintiff, Indigo Secured High Income Note, LTD., for summary judgment is hereby granted, and the Clerk is hereby directed to enter judgment in favor of plaintiff, renewing the \$42,564,205.29 judgment from the action entitled Indigo Secured High Income Note, Ltd. V HCI Secured Medical Receivables Special Purpose Corporation, a New York Corporation et al, (Index No. 650487/2013), from Supreme Court, New York County, plus interest accordingly, plus costs and disbursements.

<u>11/24/2025</u> DATE	 <b>HON. ARTHUR F. ENGORON</b> ARTHUR F. ENGORON, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
			<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT