Cohen v Pearl Capital Rivis Ventures LLC
2026 NY Slip Op 30077(U)
January 12, 2026
Supreme Court, New York County
Docket Number: Index No. 162309/2014
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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ABRAHAM COHEN, COLLINS CASH, INC.,

Plaintiff,

- v -

PEARL CAPITAL RIVIS VENTURES LLC,MEIR HURWITZ, AVRAHAM ZEINES, ARI KAPLAN, HORIZON BUSINESS FUNDING, LLC,

Defendant.

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INDEX NO. 162309/2014

MOTION DATE 12/23/2025

MOTION SEQ. NO. 016

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 016) 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571

were read on this motion to/for DISM ACTION/SUMMARY JUDGMENT.

Defendants' motion to dismiss pursuant to CPLR 3216 and for summary judgment is denied.

Background

In this Labor Law wages case, plaintiffs contend that plaintiff Cohen used to work for defendant Pearl for over three years. He insists that he worked in both sales and underwriting in the merchant cash advance industry. Plaintiff Cohen claims he signed a written agreement governing his employment with Pearl but that his employer never returned a counter-signed copy. He claims that under the contract, either party could choose not to renew as long as they gave notice 30 days before the end of the one-year term. Cohen also insisted that Pearl required each employee to open up their own company in order to receive compensation from Pearl and that is why he created the other plaintiff, Collins Cash.

Cohen alleges that during his employment he contributed hundreds of thousands of dollars of his commission money (he earned money through commissions) to investment accounts called syndicated funds, which funded client merchant transactions. Then he would receive a pro-rated revenue share based upon his contribution of commissions. He claims that in April 2014, he complained to defendants that they had failed to pay commissions and other compensation owed to him and that defendants eventually fired him in November 2014. Cohen argues he is owed nearly $700,000 in the "syndicated funds" as well as other funds depending on the extent to which certain merchants repaid their debts. He also seeks over $22,000 in commissions on defaulted transactions which he says defendants did not reimburse him.

Defendants now move to dismiss on the ground that plaintiffs have abandoned this case. They detail how plaintiffs have filed numerous motions and insist that they have not produced many key items, such as the written employment agreement or tax returns. Defendants explain that in 2014, Pearl commenced a sale of its assets and that as part of this process, they discovered that plaintiffs had made many risky investment decisions. They argue that they offered plaintiff the chance to move to the new company being formed and that he refused and instead demanded a payout.

Defendants include the affidavit of defendant Zeines[1] who insists that plaintiffs have not pointed to any proof of their claims in the many years of this litigation. He insists there never was a written agreement. Zeines explains that when a deal went bad—i.e., the merchant's receivables could not be collected—the commission had to be clawed back. He claims that Cohen left owing over $70,000 in commissions.

[1] The Court is unsure of the correct spelling for this defendant. His affirmation contains a title spelling it "Zeines" but the first line—where he swears under penalty—is "Zienes" (NYSCEF Doc. No. 546).

In opposition, plaintiffs argue that dismissal under CPLR 3216 is not appropriate and that there are many material issues of fact that compel the Court to deny summary judgment. They contend that this case has taken so long because defendants refused to produce any documents and so they had to secure discovery through non-party subpoenas. Plaintiffs point out that the entity to whom all assets were sold was identified incorrectly, which delayed their efforts to obtain discovery.

Defendants did not offer a reply.

Discussion

The Court denies the branch of the motion that seeks to dismiss under CPLR 3216. That statute sets forth a specific process by which a defendant can seek dismissal based on plaintiff's failure to prosecute. Defendants did not comply with their obligations under that statute—for instance, there is no evidence they ever sent a 90-day demand to file a note of issue. And they did not offer a reply to explain how this Court could dismiss on this statute.

The Court also denies the remaining portions of the motion. Defendants did not attach or cite to any evidence for any of their arguments. Clearly, this case is heavily dependent on factual assertions backed up by documents. For instance, in his affirmation in support, Mr. Zeines contends that plaintiff Cohen actually owes more than $70,000 in commissions that were clawed back. But there are no citations for that assertion and the Court cannot simply accept that version of events on a motion for summary judgment.

Rather, this record contains differing accounts of what happened found in Mr. Zeines' affirmation and Mr. Cohen's affirmation in opposition (NYSCEF Doc. No. 560). Competing versions of events, without more, raise clear and obvious material issues of fact. Moreover, the Court cannot grant summary judgment on defendants' counterclaims as defendants did not detail what those counterclaims are in their motion papers. Defendants' general point appears to be that plaintiffs have dragged this case along for far too long and so the Court should dismiss it. Even if plaintiffs have moved this case at a glacial pace that is not, standing alone, a reason to dismiss.

Summary

This case was recently transferred to this part. A review of the docket shows the former judge granted plaintiffs an extension of time to file the note of issue to June 7, 2024 (NYSCEF Doc. No. 538). The parties uploaded a stipulation extending the note of issue to August 30, 2024 (NYSCEF Doc. No. 542) although that was never signed by the former judge. No note of issue has been filed nor has any extension been sought. If it was the undersigned's order which was ignored, this case would have been dismissed.

From reviewing the docket and the decade of litigation, this Court finds discovery is as complete as it is ever going to be and the note of issue must be filed by January 15, 2026 or the Court will mark this case disposed without further notice. This case is over 11 years old. There has been ample opportunity to complete discovery and make motions (this is the 16th motion in this case). It's time for this case to proceed to trial.

Accordingly, it is hereby

ORDERED that defendants' motion is denied in its entirety; and it is further

ORDERED that a note of issue shall be filed by January 15, 2026 or the Court will mark the case as disposed.

1/12/2026
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	☐ CASE DISPOSED		☒ NON-FINAL DISPOSITION	
	☐ GRANTED	☒ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER		☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN		☐ FIDUCIARY APPOINTMENT	☐ REFERENCE