

| |
|--|
| Cavuoti v Intelligent Payment Processing Inc. |
| 2026 NY Slip Op 30205(U) |
| January 15, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 153323/2019 |
| Judge: Nancy M. Bannon |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication. |

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

PRESENT: HON. NANCY M. BANNON PART 61M

Justice

-----X

MICHAEL CAVUOTI,

Plaintiff,

- v -

INTELLIGENT PAYMENT PROCESSING INC., THE CARD
COLLABORATIVE INTERNATIONAL, MICHAEL C.
TRIMARCO, PETER J. VOGEL, INTELLIPAYMENT LLC,

Defendants.

-----X

INDEX NO. 153323/2019
MOTION DATE 07/21/2025
MOTION SEQ. NO. 010

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 010) 311, 312, 313, 314, 315, 316, 317, 318, 320, 321, 322, 323, 324, 325, 326, 327, 329

were read on this motion to/for JUDGMENT - DEFAULT.

In this breach of contract action, commenced in March 2019, the complaint was dismissed as against defendant The Card Collaborative International by an order of this court (Ostrager, J. [Ret.]) dated December 9, 2019. The action was discontinued as against defendant Peter Vogel by stipulation, leaving as the remaining defendants Intelligent Payment Processing Inc. (Intelligent Payment), and one of its principals, Michael Trimarco. The plaintiff filed a Note of Issue on October 31, 2023.

By an order dated February 14, 2025, the court scheduled a remote pre-trial conference for March 10, 2025, and in that order referred the parties to the Part 61 Rules for pre-trial procedures. Only the plaintiff submitted the required items listed in those Rules. At the conference, counsel for the plaintiff and defendant Intelligent Payment appeared. When questioned by the court, counsel for defendant Intelligent Payment Processing Inc. provided no reasonable excuse for failure to submit the required materials. Stephen C. Giametta, counsel for defendant Michael G. Trimarco, failed to appear altogether. Rather, one hour before the scheduled start of the conference, Mr. Giametta filed an Order to Show cause seeking to be relieved as counsel, which, of course, was declined as untimely.

By an order dated March 10, 2025, the court, citing the above procedural background, struck the joint answer filed by defendants Intelligent Payment and Michael C. Trimarco pursuant to 22 NYCRR 202.27. Trimarco has not substituted counsel

The plaintiff thereafter moved pursuant to CPLR 3215 for leave to enter a default judgment against the defendants (MOT SEQ 010). Defendant Trimarco, proceeding *pro se*, filed a cross-motion seeking to vacate the March 10, 2025, order, pursuant to CPLR 5015 and seeking various other forms of relief, which to the extent decipherable, include discovery, extensions of time and sealing. Defendant Intelligent Payment made no motion.

On August 29, 2025, defendant Intelligent Payment filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Southern District of Florida, and notified this court of the filing. By an order dated September 2, 2025, the court held MOT SEQ 010 in abeyance upon the automatic bankruptcy stay pursuant to 11 U.S.C. § 362 and scheduled a status conference for January 15, 2026. On January 13, 2026, counsel for the plaintiff notified the court that the stay was lifted by order of the bankruptcy court dated November 12, 2025, dismissing the bankruptcy case. Counsel for Intelligent Processing never notified the court as directed. Counsel for the plaintiff, counsel for Intelligent Payment appeared and Michael Trimarco appeared *pro se* for the status conference on January 15, 2015, and were notified that MOT SEQ 010 would now be submitted for decision.

“On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party’s default in answering or appearing (see CPLR 3215[f]; Allstate Ins. Co. v Austin, 48 AD3d 720, 720 [2nd Dept. 2008]).” Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649, 651 (2nd Dept. 2011). Upon the verified complaint, the plaintiff has met that burden on its claims for breach of contract, breach fiduciary duty, aiding and abetting breach of fiduciary duty, corporate waste, and conversion. When an answer is stricken and a default entered, the defendant ‘admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff’s conclusion as to damages [citation omitted].” Curiale v Ardra Ins. Co., 88 NY2d 268, 279 (1996), *quoting* Rokina Opt. Co. v Camera King, 63 NY2d 728, 730 (1984); *see* Amusement Bus. Underwriters v American Intl. Group, 66 NY2d 878 (1985). While the plaintiff states in his affidavit in support

that he seeks a total of \$6.9 million, he does not establish that amount on the papers submitted. An inquest is necessary. The motion is otherwise denied.

To vacate a judgment entered on default under CPLR 5015(a)(1) the moving party must demonstrate both a reasonable excuse for the failure to appear and a potentially meritorious defense to the proceeding. See CPLR 5015(a); Shmukler v Feintuch Comms., Inc., 158 AD3d 469 (1st Dept. 2018); Matter of Bendeck v Zablah, 105 AD3d 457 (1st Dept. 2013). In order to establish a reasonable excuse, the movant must submit facts explaining the reason for its default, and it is “within the court’s sound discretion to determine whether the excuse for the default is sufficient.” Chevalier v 368 E.148th St. Assoc., LLC, 80 AD3d 411, 413 (1st Dept. 2011); see Woodson v Mendon Leasing Corp., 100 NY22 62 (2003); Bengal House Ltd. V 989 Third Ave., Inc., 118 AD3d 575 (1st Dept. 2014). Defendant Trimarco failed to meet that burden. As noted, defendant Intelligent Payment did not move to vacate.

Defendant Trimarco’s request for other various form of relief is procedurally improper, vacatur being the only remedy a defaulting party may seek.

Accordingly, it is

ORDERED that the bankruptcy stay having been lifted by an order of the United States Bankruptcy Court for the Southern District of Florida, the plaintiff’s motion pursuant to CPLR 3215 for leave to enter a default judgment and the cross-motion of defendant Michael C. Trimarco to vacate and for various forms of relief (MOT SEQ 010), previously held in abeyance, are restored to the court’s calendar, and it is further

ORDERED that the plaintiff’s motion for leave to enter a default judgment is granted to the extent that an inquest on damages is scheduled for August 14, 2026, at 10:00 a.m., and it is further

ORDERED that the cross-motion of defendant Michael C. Trimarco to vacate and for other relief is denied in its entirety, and it is further

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- (1) the issue of the amount of compensatory damages the plaintiff may recover on his causes of action for breach of contract, breach fiduciary duty, aiding and abetting breach of fiduciary duty, corporate waste and conversion, as against defendants Intelligent Payment Processing, Inc. and Michael C. Trimarco,

and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that plaintiff shall serve a proposed accounting within 24 days from the date of this order and the defendant shall serve objections to the proposed within 20 days from service of plaintiff’s papers and the foregoing papers shall be filed with the Special Referee Clerk prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part,

subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further


ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts (22 NYCRR 202.44); and it is further

ORDERED that the plaintiff shall serve a copy of this order on the defendants within 20 days; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

1/15/2026
DATE

| | | | | | | |
|-----------------------|--------------------------|----------------------------|-------------------------------------|-----------------------|-------------------------------------|-----------|
| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | | |
| | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | DENIED | <input type="checkbox"/> | OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input checked="" type="checkbox"/> | REFERENCE |