

Cavuoti v Intelligent Payment Processing Inc.
2026 NY Slip Op 30481(U)
February 9, 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

**AMENDED
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.

The court's Decision and Order dated January 15, 2026, is hereby corrected to remove the Reference and confirm the Inquest date:

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 on the issue of liability and 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 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

2/9/2026
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