

Kapitus Servicing, Inc. v H2O Sports Mfg. LLC

2026 NY Slip Op 31196(U)

March 24, 2026

Supreme Court, New York County

Docket Number: Index No. 653993/2025

Judge: Emily Morales-Minerva

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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
COUNTY OF NEW YORK: PART 42M

-----X	
KAPITUS SERVICING, INC.,	INDEX NO. <u>653993/2025</u>
Plaintiff,	MOTION DATE <u>09/12/2025</u>
- v -	MOTION SEQ. NO. <u>001</u>
H2O SPORTS MANUFACTURING LLC, CHARLES W BAKER	
Defendants.	DECISION + ORDER ON MOTION
-----X	

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2
were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

APPEARANCES:

Kapitus, Arlington, VA (Kristyn Nicola Harrison, Esq., of
counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

In this action to recover payment due upon a settlement
agreement and confession of judgment, plaintiff KAPITUS
SERVICING, INC. moves, by notice of motion (sequence number 01),
pursuant to CPLR § 3213, for summary judgment in lieu of a
complaint. Defendants H2O SPORTS MANUFACTURING LLC and CHARLES
W. BAKER do not appear or submit opposition to the motion.

A plaintiff may seek relief under CPLR § 3213 "when [the]
action is based upon an instrument for the payment of money
only" (see Weissman v Sinorm Deli, Inc., 88 NY2d 437, 444 [1996]
[holding that CPLR § 3213 begins with the threshold requirement

"that the action be based on an instrument for the payment of money only or a judgment"]; see also LFR Collections LLC v Tammy Tran Attorneys at Law, LLP, 238 AD3d 490 [1st Dept 2025]). An instrument qualifies as one for the payment of money only when it does not require any additional performance on the plaintiff's part as a condition precedent to repayment (see PDL Biopharma, Inc. v Wohlstadter, 147 AD3d 494, 495 [1st Dept 2017]; see also Fortress Credit Corp. v Cohen, 235 AD3d 553, 554 [1st Dept 2025]). Agreements guaranteeing both payment and performance do not qualify as an instrument for the payment of money (see Punch Fashion, LLC v Merck Factors Corp., 180 AD3d 520, 521 [1st Dept 2020]; see also 27 W 72nd St. Note Buyer LLC v Terzi, 194 AD3d 630, 632 [1st Dept 2021]).

Further, "[a] document comes within CPLR § 3213 if a prima facie case would be made out by the instrument and a failure to make the payments called for by its terms" (Weissman, 88 NY2d at 444 [internal quotation marks and citations omitted]). "The instrument does not qualify if outside proof is needed, other than simply proof of nonpayment or similar de minimis deviation from the face of the document" (id.; see also PDL Biopharma, Inc., 147 AD3d at 495 [holding "[a] document does not qualify for CPLR § 3213 treatment if the court must consult other materials besides the bare document and proof of nonpayment"]).

"Once the plaintiff submits evidence establishing these elements, the burden shifts to the defendant to submit evidence establishing the existence of a triable issue with respect to a bona fide defense" (Zyskind v FaceCake Mktg. Tech., Inc., 101 AD3d 550, 551 [1st Dept 2012]).

Here, plaintiff establishes prima facie that the parties' settlement agreement constitutes "an instrument for the payment of money only", and that defendantS defaulted by failing to pay the required settlement amount (CPLR § 3213; see also Express Trade Capital, Inc. v Horowitz, 198 AD3d 529, 530 [1st Dept 2021] [holding that "plaintiff filed an action under CPLR § 3213, which the court correctly concluded was appropriate based on the settlement agreement and confession of judgment"]).

Specifically, plaintiff submits the settlement agreement, which is executed by both defendant H20 SPORTS MANUFACTURING LLC and defendant CHARLES W. BAKER individually (NYSCEF Doc. No. 04); the duly executed and notarized confession of judgment, also executed by both defendant H20 SPORTS MANUFACTURING LLC and defendant CHARLES W. BAKER individually (see id., exhibit A); the notice of default (NYSCEF Doc. No. 05); the outstanding amount due (NYSCEF Doc. No. 03); and an affirmation of David Wolfson, Vice President of plaintiff, who swears, under penalty of perjury, that defendant has failed to pay \$52,613.00 of the \$80,000.00 due (see id.; see also Weissman, 88 NY2d at 444 ["the

prototypical example of an instrument within the ambit of the statute is of course a negotiable instrument for the payment of money -- an unconditional promise to pay a sum certain, signed by the maker and due on demand or at a definite time").

By failing to appear or submit opposition to the motion (seq. no. 01), defendants fail to raise a triable issue as to a defense to the settlement agreement (Sears Holding Mgmt. Corp. v Rockaway Realty Assocs., LP, 176 AD3d 433, 433 [1st Dept 2019] [holding: "as defendants submitted no relevant admissible evidence in opposition to the motion, we affirm the grant of summary judgment [] in plaintiff's favor"]; see also Zuckerman v City of New York, 49 NY2d 557, 560 [1980])). Therefore, plaintiff's motion (seq. no. 01) is granted.

Accordingly, it is hereby

ORDERED that plaintiff's KAPITUS SERVICING, INC. CPLR § 3213 motion (sequence number 01) for summary judgment in lieu of a complaint is granted; it is further

ORDERED that plaintiff KAPITUS SERVICING, INC. is awarded a judgment against defendants H2O SPORTS MANUFACTURING LLC and CHARLES W. BAKER, jointly and severally, for the amount of \$52,613.00, plus interest at the rate of 9% per annum from October 14, 2016; it is further

ORDERED that the Clerk of Court is directed to enter judgment in favor of plaintiff KAPITUS SERVICING, INC. and

against defendants H2O SPORTS MANUFACTURING LLC and CHARLES W. BAKER, jointly and severally, in the amount of \$52,613.00, plus interest at the rate of 9% per annum from October 14, 2016, together with costs and disbursements; and it is further

ORDERED that, within twenty days from the date of this decision and order, plaintiff KAPITUS SERVICING, INC. shall serve a copy of this order with notice of entry on defendants H2O SPORTS MANUFACTURING LLC and CHARLES W. BAKER, as well as on the Clerk of the Court, who shall enter judgment accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

3/24/2026
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

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