

FCS Advisors, LLC v Imagelink SPE, LLC
2026 NY Slip Op 31266(U)
March 29, 2026
Supreme Court, New York County
Docket Number: Index No. 653077/2023
Judge: Andrea Masley
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
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

FCS ADVISORS, LLC D/B/A BREVET CAPITAL
ADVISORS, A DELAWARE LIMITED LIABILITY
COMPANY,

Plaintiff,

- v -

IMAGELINK SPE, LLC, A DELAWARE LIMITED LIABILITY
COMPANY, IMAGELINK FCS, LLC, A DELAWARE
LIMITED LIABILITY COMPANY, and ROSS E ELGART,

Defendants.

-----X

INDEX NO. 653077/2023

MOTION DATE _____

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 69, 70, 71, 72, 73, 74, 75

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR.

Plaintiff FCS Advisors, LLC d/b/a Brevet Capital Advisors, is the lender on a \$10 million promissory note (Note) and the borrower is defendant Imagelink SPE (Borrower); the Note is guaranteed by defendants Imagelink FCS and Elgart.¹ (NYSCEF 4, Note.) Borrower admittedly defaulted on July 15, 2019. (NYSCEF 26, Elgart ¶¶15.) Plaintiff seeks judgment against all defendants, jointly and severally, in the amount of \$3,771,148.86 for principal and interest due as of June 4, 2024, administrative fees of \$42,000,² attorneys' fees of \$146,250³ as of June 4, 2024 and pre-and post-judgment interest, through the entry of judgment. (NYSCEF 50, FCS calculation of principal and

¹ Ross Elgart is President of both ImageLink FCS, LLC and ImageLink SPE, LLC which purchases medical receivables. (NYSCEF 70, Elgart aff ¶¶1, 3.)

² The annual fee is \$18,000. (NYSCEF 7, Credit Agreement at 3/97.) Defendants acknowledge owing this amount. (NYSCEF __, March 25, 2026.)

³ Plaintiff may supplement its attorney affidavit for fees up to and including the March 25, 2026 inquest.

interest; NYSCEF 59, colon aff.) On March 11, 2024, the court granted plaintiff's motion for summary judgment in lieu of complaint as to liability and directed an inquest on damages. (NYSCEF 46, Decision and Order.)

As an initial matter, for the reasons stated on the record on March 25, 2026, defendants' motion to vacate the note of issue⁴ and strike the matter from the trial calendar is denied. Defendants fundamentally object to CPLR 3213, but that is no reason to grant the requested relief, which is woefully tardy. Defendants' suggestion that the note of issue should be vacated to allow discovery is absurd since defendants never requested discovery in this 2023 action. Moreover, the discovery defendants now allegedly seek has all been known to defendants since defendants filed their opposition to the 3213 motion. (See NYSCEF 26, Elgert October 6, 2023 aff ¶¶16-17, defendants' version of the waiver of interest; ¶¶18-28, the "dispute" over the amount set forth in the Limited Waiver; ¶¶29-31, the signing of the Audit Confirm under "duress"; ¶¶33-37 the Borrowing Base Certificate; ¶37 plaintiff's alleged "two sets of books"; and ¶¶38-39, Elgert's belief that plaintiff's interest as lender was "transferred or assigned".) The Court rejects defendants' notion that the court deprived them of the opportunity to take discovery since defendants were well aware that they could seek discovery if plaintiff was successful on the 3213 motion. (See NYSCEF 60, Elgert May 31, 2024 aff in opposition to 3213 motion asserting a reservation of rights to take discovery ¶8.) However, defendants failed to seek such discovery until the eve of inquest after delaying the conclusion of this inquest for years by changing attorneys. (See NYSCEF

⁴ While the note of issue was filed on February 10, 2026 (NYSCEF 68), the inquest began on June 4, 2024. (NYSCEF 62, tr.)

72, Majorie⁵ aff ¶12 [October 17, 2023 delay when O'Brien⁶ left firm]; NYSCEF 64, Court's September 23, 2024 email; NYSCEF 73, 2023 attorney email chain.)

This is a 2023 action pursuant to CPLR 3213 for summary judgment in lieu of complaint which was granted on March 11, 2024. (NYSCEF 4, December 4, 2017 Note; NYSCEF 46, Decision and Order.) As the only issue was admittedly the calculation of damages, the court directed the parties to submit their competing calculations for an inquest on May 3, 2024. (NYSCEF 48, tr 4:24-5:15.) Defendants failed to do so. Accordingly, the court adopts the plaintiff's calculation of damages. (NYSCEF 50, Calculation; NYSCEF 59, Manuel Colon trial aff.) The court found Colon's testimony credible; he explained how plaintiff calculated its damages. (NYSCEF 62, tr 10-51.) Colon also explained that, consistent with the waiver, default interest of 19% was waived from January 1, 2021 to January 1, 2022, during which waiver period, 15% applied. (NYSCEF 59, Colon Trial aff ¶122.) Plaintiff did not waive default interest from the date of default of July 15, 2019, as defendants seek here. (NYSCEF 26, Elgart aff ¶¶23-25.)

Colon's reliance on plaintiff's books and records for the calculation was reasonable since the parties agreed that they were "presumptively correct." (NYSCEF 11, December 31, 2020 Limited Waiver 2[f].) Accordingly, the court rejects defendants' reliance on the Borrowers base and audit confirmations to challenge plaintiff's recordkeeping.

⁵ Francis B. Majorie represents plaintiff.

⁶ Paul M. O'Brien represents defendants.

Following an inquest on damages on March 25, 2026 at which the court finally had the opportunity to hear from defendants' witness, the court finds in favor of plaintiff because defendants failed to offer credible evidence otherwise.

The issue at inquest concerns the calculation of damages and arises from the December 31, 2020 Limited Waiver and Amendment No. 2 to the Amended and Restated Credit Agreement (Credit Agreement 2). Section 2 of the Credit Agreement 2 was amended by adding the following Section 2.10, Prior Advances:

2(f) As of the Second Amendment Effective Date [December 31, 2020 per definitions], the Loan Parties acknowledge that the Lender entries reflect Advances to the Borrower under this Agreement, together with accrued and unpaid interest and all other amounts due as Obligations hereunder, which total \$3,183,089.75 plus reimbursement or other payment of all reasonable and documented out-of-pocket expenses (including, without limitation, reasonable fees, charges and disbursements of Greenberg Traurig, LLP) required to be reimbursed or paid by the Borrower pursuant to Section 9.02(b) hereof or otherwise in connection with this Agreement or any Loan Document), which Obligations remain outstanding (the "Prior Advances"). The Loan Parties agree that the Lender's records shall be evidence of the existence and amounts of the Obligations recorded therein and shall be presumptively correct absent demonstrable error; provided that any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with the terms of this Agreement. If, prior to January 15, 2021, an amendment to the definition of Prior Advances is requested by the Loan Parties in writing (a "Prior Advances Amendment Request"), the definition of "Prior Advances" (without the payment of any amendment or similar fees to the Lender) to preserve the original intent of this Section 2.10, with the effectiveness of such amendment subject to the written approval (not to be unreasonably withheld, conditioned or delayed) by the Lender and the Loan Parties (a "Specified Amendment). The Loan Parties agree that the Prior Advances made by the Lender are the amounts due to the Lender by the Borrower on or prior to the Second Amendment Effective Date (including on account of interest, fees and expenses), and that such Prior Advances shall remain Advances hereunder. As of the Second Amendment Effective Date, the Borrower is unaware of any facts or circumstances that might give rise to a claim (or cause of action, debt, obligation, etc.) against the Lender or that, with the passage of time, might give rise to a claim against the Lender for any act or omission arising from or relating to the Loan Documents, and that the Borrower expressly waives or relinquishes any such claim. (Limited Waiver NYSCEF 35.) (emphasis added.)

Defendants complied with §2(f) before January 15, 2021 by making a Prior Advances Amendment Request which triggered a good faith negotiation among the parties. (NYSCEF 36, email.) However, plaintiff's witness Manuel Colon credibly testified that the parties tried but failed to come to a subsequent agreement, which efforts were corroborated by contemporaneous emails. (NYSCEF 62, Colon tr 33:2-7; NYSCEF 36, email chain.)

Defendants assert that the amount sought by plaintiff is off by \$400,000 because interest between July 15, 2019 (the date of Image SPE's default) to December 31, 2020 (the date of the Limited Waiver) should be 15%, not 19%. (NYSCEF 26, Elgart ¶¶23, 24; NYSCEF 7, Credit Agreement ¶ 2.01[c].)

It is undisputed that the parties agreed to a waiver of the default interest rate for some period of time. (NYSCEF 35, Limited Waiver at 1.) Indeed, plaintiff applied the waiver to the calculation. (NYSCEF 50, FCS principal and interest calculation at January 1, 2021 to January 1, 2022.) However, since the parties did not agree otherwise, the only issue is whether the parties engaged in good faith negotiations.

The court finds that plaintiff engaged in good faith negotiations, as they agreed in the Limited Waiver. (NYSCEF 11, Limited Waiver 2[f].) Colon testified credibly about identifying the differences in defendants' proposal, how he reconciled the differences in defendants' proposed calculation, and communicated with defendants, thus reducing the differential to \$400,000, but the parties were unable to agree on the definition of "Prior Advances". (NYSCEF __, March 25, 2026 tr __.)⁷ Defendants' Bradford Ames acknowledged these efforts. (NYSCEF 36, email chain, January 20, 2021 at 1:47 pm ["I

⁷ Plaintiff has waited long enough for this proceeding to conclude. Accordingly, the court is issuing the decision without waiting for the transcript.

agree with all other adjustments made in your reconciliation provided today.”]) There was no resolution. However, failure to arrive at an agreement following discussions or unsuccessful negotiations is not bad faith.

Elgert’s testimony, which the court finds unreliable and incredible, fails to support defendants’ defenses, and thus changes nothing. His testimony that plaintiff acted unfairly because plaintiff held defendants to the contract revealed defendants’ unreasonable position in this case. (NYSCEF ___, March 25, 2026 tr ___.) The court finds that complying with a contract is not bad faith. Rather, defendants’ position on March 25, 2026 that defendants owe plaintiff a \$42,000 administrative fee and nothing more completely contradicts Elgert’s admission that defendants defaulted on July 15, 2019, while owing defendants over \$3 million, and, thus undermines his veracity.⁸ (NYSCEF 26, Elgert 15.) Indeed, the court found Elgert, an experienced businessperson, either naïve or incredible, for testifying to his belief that it was unfair for a lender of \$10 million to hold a borrower to the contract. Further, Elgert adamantly objects to New York’s CPLR 3213 process of summary judgment in lieu of complaint, which is not a defense to plaintiff’s calculation of damages.

In this 2023 action, plaintiff seeks \$146,250 in legal fees through June 4, 2024 based on the affirmation of their attorney Francis Majorie, Esq. (NYSCEF 58, May 31, 2024 Majorie aff.) To determine the reasonableness of the requested attorneys’ fees, the court is guided by the following factors: (1) “the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented”; (2) “the lawyer’s experience, ability, and reputation”; (3) “the amount involved and benefit

⁸ As of July 14, 2019, defendants owed plaintiff principal of \$3,418,963 and interest of \$118,239. (NYSCEF 50.)

resulting to the client from the services”; (4) “the customary fee charged by the Bar for similar services”; (5) “the contingency or certainty of compensation”; (6) “the results obtained”; and (7) “the responsibility involved.” (*Matter of Freeman*, 34 NY2d 1, 9 [1974].) These factors apply in commercial cases. (Commercial Litigation in New York § 61:7, Criteria for Determining Reasonableness [5th ed, Oct. 2023 update].) The court also relies on its own knowledge of hourly rates charged by private firms who practice in the Commercial Division, New York County. (See *Miele v New York State Teamster Conference Pension & Retirement Fund*, 831 F2d 407, 409 [2d Cir 1987].)

At a conference, on the record, on October 14, 2025, the court informed plaintiff that its affirmation of services was inadequate because counsel did not submit invoices or time sheets. However, on March 25, 2026, counsel explained that he negotiated a price with plaintiff for each task which the court found credible. (NYSCEF ___, March 25, 2026 tr.) Counsel also provided an approximation of the hours worked on each task hours listed in counsel’s affidavit, which the court finds realistic, and the fee for the work wholly reasonable though it does not include charges for the extra work and delays caused by defendants. (NYSCEF 58 Majorie aff ¶5.) Counsel’s expertise is unquestionable. (*Id.* ¶¶4, 5.) Clearly, plaintiff benefits from counsel’s success in finally obtaining a judgment. Counsel’s hourly rate of \$750 is well below that of local New York City counsel with similar experience in commercial litigation. (*Id.* ¶¶3, 7[f].) Counsel testified about his fee and was available for cross examination on October 30, 2024 and again on March 25, 2026. (NYSCEF 65, tr 14-17.) Therefore, the court finds plaintiff’s request for attorneys’ fees, which are allowed by the Note, in the amount of \$146,250 to be reasonable.

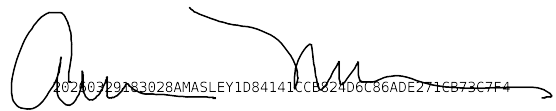
Accordingly, it is

ORDERED that motion 002 is denied and defendants shall submit the transcript to be so ordered; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants, joint and several, in the amount of \$3,771,148.26 as of June 4, 2024, together with interest at the rate of 19% per annum from the date of June 5, 2024 to the date of the judgment and thereafter at the statutory rate, as calculated by the Clerk, together with the administrative fee of \$42,000, attorneys' fees of \$146,250, and costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it if further

ORDERED that by April 10, 2026, plaintiff may supplement its attorney affidavit for fees up to and including the March 25, 2026 inquest. Otherwise, it is waived; and it is further

ORDERED, if plaintiff supplements its attorneys' fees, then the court may amend this order accordingly, after defendants have five business days, post service by email of the update, to object by timely filing in NYSCEF and emailing to the court defendants' objections. Otherwise, plaintiff may submit a proposed judgment to the Count Clerk forthwith.



3/29/2026
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input checked="" type="checkbox"/>	GRANTED IN PART	<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 type="checkbox"/>	REFERENCE
--------------------------	-----------------------	--------------------------	-----------