

DB Protective, LLC v JP Morgan Chase Bank, N.A.

2026 NY Slip Op 31311(U)

March 31, 2026

Supreme Court, New York County

Docket Number: Index No. 654676/2022

Judge: Matthew V. Grieco

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

-----X

DB PROTECTIVE, LLC,

Plaintiff,

- v -

JP MORGAN CHASE BANK, N.A.,

Defendant.

-----X

JP MORGAN CHASE BANK, N.A.

Third-Party Plaintiff,

-against-

BAR TARNOVSKI, DENNIS POLONSKI, DOR KENET, GALI WYLER

Third-Party Defendants.

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INDEX NO. 654676/2022

MOTION DATE 12/22/2025, 01/04/2026

MOTION SEQ. NO. 005 006

DECISION + ORDER ON MOTIONS

Third-Party Index No. 595159/2023

The following e-filed documents, listed by NYSCEF document number (Motion 005) 126, 127, 128, 129, 130, 131

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY

The following e-filed documents, listed by NYSCEF document number (Motion 006) 132, 133, 134, 135, 136, 137, 138

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY

Upon the foregoing documents, and for the reasons stated infra, the motions are granted in part.

Plaintiff, DB Protective, LLC ("DB"), commenced this action in December 2022 to compel defendant, JP Morgan Chase Bank, N.A. ("Chase"), to return \$208,930.94 that had been wired from a DB account at Chase to another account at Chase held by an allegedly defalcating former employee, Dor Kenet (NYSCEF Doc. No. 1).

Chase counterclaimed and brought a third-party action against Kenet and DB's principals, Bar Tarnovski, Dennis Polonski, and Gali Wyler, seeking a determination of who is entitled to the funds, which Chase had frozen pending the outcome of the litigation (NYSCEF Doc. Nos. 26-28). DB filed cross-claims against Polonski and Kenet, alleging that Polonski had aided Kenet in his attempt to divert the funds (NYSCEF Doc. No. 32). Polonski cross-claimed against DB, Tarnovski, and Wyler, alleging that Tarnovski and Wyler, who together held 60% of DB, had tried to destroy Polonski's 40% equity value (NYSCEF Doc. No. 54). Kenet, pro se, cross-claimed against Tarnovski and Wyler for breach of contract, defamation, and related claims (NYSCEF Doc. No. 57).

Chase subsequently moved to be discharged upon depositing with the Court the contested funds, less its legal fees; by order entered January 7, 2025, the Court (Arthur F. Engoron, J.) granted the motion (NYSCEF Doc. No. 92), which it adhered to on reargument (NYSCEF Doc. No. 110).

DB then moved, unopposed, to amend the complaint to assert causes of action against Polonski and Kenet, reformulating the cross-claims and adding allegations of conversion of \$123,052 of DB checks and unauthorized withdrawal or corporate credit card charges of \$43,300 (NYSCEF Doc. Nos. 116-119). The Court (Arthur F. Engoron, J.) granted the motion by order entered October 17, 2025 (NYSCEF Doc. No. 120). Polonski answered and cross-claimed against Tarnovski and Wyler on November 25, 2025 (NYSCEF Doc. No. 121). Kenet answered, counterclaimed against DB, and cross-claimed against Tarnovski and Wyler the next day (NYSCEF Doc. No. 122).

DB filed a note of issue on December 15, 2025 (NYSCEF Doc. No. 125).

On December 22, 2025, Polonski moved pursuant to 22 NYCRR 202.21(e) to vacate the note of issue, contending that discovery was needed regarding the amended

complaint (NYSCEF Doc. Nos. 126-131). Kenet, pro se, moved for the same relief on January 4, 2026 (NYSCEF Doc. Nos. 132-136). DB, Tarnovski, and Wyler opposed (NYSCEF Doc. Nos. 137-138).¹

22 NYCRR 202.21(e) provides, in pertinent part:

Within 20 days after service of a note of issue and certificate of readiness, any party to the action or special proceeding may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect.

The certificate of readiness must state that discovery proceedings known to be necessary have been completed, there are no outstanding discovery requests, there has been a reasonable opportunity to complete the proceedings, and the case is ready for trial (22 NYCRR 202.21[b]). Thus, if a note of issue inaccurately states that all discovery has been completed, it should be vacated (*see Nielsen v New York State Dormitory Auth.*, 84 AD3d 519 [1st Dept 2011]), or the court could permit post-note of issue discovery without vacating the note of issue if the parties would not be prejudiced (*see Cabrera v Abaev*, 150 AD3d 588 [1st Dept 2017]).

Polonski and Kenet assert that a bill of particulars has not yet been served, no depositions have been conducted, and no discovery has been exchanged regarding the new claims in the amended complaint.

DB, Tarnovski, and Wyler argue that Polonski and Kenet failed to avail themselves of the ample opportunity to seek any discovery they wished before the note of issue was filed. They point to a status conference order (Lori S. Sattler, J.), dated June

¹ Counsel's affirmation indicates that all three oppose (NYSCEF Doc. No. 137), but the memorandum of law only lists DB (NYSCEF Doc. No. 138).

25, 2024, which, *inter alia*, directed Kenet to serve his discovery demands by July 3, 2024 and for depositions to be scheduled after decision on Chase's stakeholder motion to be discharged (NYSCEF Doc. No. 81), and another status conference order (Arthur F. Engoron, J.), dated February 25, 2025, which, *inter alia*, directed Polonski and Kenet to serve discovery demands within 30 days (NYSCEF Doc. No. 109). After a virtual disclosure conference on June 26, 2025, the Court (Arthur F. Engoron, J.) issued an order the same day, directing DB to respond to all outstanding discovery demands and to file a note of issue by December 19, 2025 (NYSCEF Doc. No. 115); the only demands evident in NYSCEF were documentary, and DB maintains that Polonski and Kenet have never requested any depositions, which Polonski and Kenet do not dispute. Polonski mentions that a settlement conference took place virtually before Justice Engoron on December 1, 2025, which is reflected on eCourts, but the parties do not elaborate on whether any discovery issues were discussed.

This case was commenced in December 2022, and apparently neither Polonski nor Kenet ever demanded a bill of particulars or depositions. Where a party fails to complete depositions or pursue other discovery that could have been obtained with reasonable diligence before the court-imposed deadline, it waives such right, and the court may providently deny a motion to vacate the note of issue (*see IO Experience Design LLC v C & A Marketing Inc.*, 220 AD3d 444 [1st Dept 2023]; *Aikanat v Spruce Assoc., L.P.*, 182 AD3d 437 [1st Dept 2020]).

Nevertheless, DB's own motion to amend the complaint, which added \$166,352 in dispute, based on different facts and legal theories, urged that "much ha[d] changed since the summons and complaint was filed," and that the new causes of action were "largely predicated on changes of circumstances in the case and new information"

(NYSCEF Doc. No. 119). DB should have anticipated that Polonski and Kenet might wish to obtain discovery related to the new claims, and DB's rush to file a note of issue almost immediately after obtaining the requested amendment at least raises a question whether Polonski and Kenet had sufficient opportunity to obtain such discovery. Of course, Polonski and Kenet could have been proactive, but it is not self-evident from DB's motion to amend that it would forego any discovery of its own on the new claims.

Under those circumstances, the most appropriate course is to deny the motions to vacate the note of issue, but permit post-note of issue discovery limited to the new claims (see *Santacruz v 58 Gerry St LLC*, 246 AD3d 600 [1st Dept 2026]). In that way, Polonski and Kenet will not be prejudiced, but dilatory or other tactics will not be condoned.

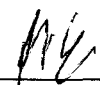
It is therefore

ORDERED that the motions to vacate the note of issue and strike the case from the trial calendar are denied, but the parties shall be permitted further discovery as directed at the next status conference; and it is further

ORDERED that the parties shall appear for a conference in Room 623, 111 Centre Street, New York, New York on April 14, 2026 at 10:00 AM.

This constitutes the decision and order of the Court.

3/31/2026
DATE


MATTHEW V. GRIECO, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SUBMIT ORDER GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN