

<b>Rizzi Holdings LLC v Nassau John Invs. LLC</b>
2026 NY Slip Op 31336(U)
April 1, 2026
Supreme Court, New York County
Docket Number: Index No. 652572/2024
Judge: Nicholas W. Moyne
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May 27, 2025, the plaintiff filed an amended verified complaint. On July 15, 2025, the plaintiff moved for a default judgment, arguing that the individual defendants failed to timely answer. The individual defendants moved to dismiss the amended complaint, arguing they were never served with the amended pleading, and that documentary evidence conclusively refutes any claims of personal liability against them.

In motion sequence 001, the plaintiff moves for a default judgment. Under CPLR §3215(f), a plaintiff seeking a default judgment must submit proof of service of the summons and the operative complaint. It is well-settled that under New York law when an amended complaint has been served, it supersedes the original complaint and becomes the only complaint in the case (see *Qualified Impressions, LLC v Pessa*, 236 AD3d 687, 688 [2d Dept 2025]; *Plaza PH2001 LLC v. Plaza Residential Owner LP*, 98 AD3d 89, 90 [1st Dept 2012]). The action must then proceed as though the original pleading had never been served (see *Plaza*, 98 AD3d at 90).

Here, the record reflects that the individual defendants accepted service of the original verified complaint and stipulated to an extension of time to respond to that specific pleading. However, the plaintiff subsequently filed an amended verified complaint on May 27, 2025. The plaintiff has failed to file any proof of service demonstrating that this amended complaint was ever properly served on the individual defendants. Because the amended complaint superseded the original, the individual defendants had no legal obligation to answer a pleading they were never served. Absent proper service of the operative complaint, no default can be entered. Accordingly, in motion sequence 001, the plaintiff's motion for a default judgment is denied.

In motion sequence 002, the individual defendants move to dismiss the amended complaint under CPLR §3211(a)(1) based on documentary evidence, and CPLR §3211(a)(7) for failure to state a claim. A motion to dismiss under CPLR §3211(a)(1) may be granted only if the documentary evidence submitted utterly refutes plaintiff's factual allegations and conclusively establishes a defense as a matter of law (see *Fortis Fin. Servcs, LLC v Fimat Futures USA*, 290 AD3d 383,383 [1st Dept. 2002]; see also *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002] [3211(a)(1) motion should be granted "where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law."])

The plaintiff's second and third causes of action assert that the individual defendants breached their fiduciary duties to the plaintiff by failing to secure financing before making a down payment on the property. These claims are premised on the allegation that the individual defendants were the managing members of the company. The documentary evidence squarely refutes this allegation. The Operating Agreement clearly designates Strat Development LLC—not the individual defendants—as the "initial Manager of the Company" and specifies that "[t]he Company shall have no other Manager." The agreement vests the management of the business and affairs "exclusively in Manager." Furthermore, the Subscription Agreement signed by the plaintiff explicitly acknowledges that members' rights to participate in management are "severely limited" and that Strat Development LLC "will manage the day-to-day affairs of the Company."

Under Limited Liability Company Law (LLCL) § 412(b)(1), in a manager-managed LLC, a non-managing member owes no fiduciary duty to the LLC or its members solely by reason of being a member (*see Kalikow v. Shalik*, 43 Misc. 3d 817, 825 [Sup. Ct. Nassau Cnty. 2014]). Noticeably absent from the Limited Liability Company Law, which expressly imposes a duty of good faith upon managers of an LLC, is any concomitant duty on a non-managing member (*see Karon S. Walker*, *New York Limited Liability Companies and Partnerships* § 1:8 [West's NY Prac Series] ["(a) member who is not a manager does not owe a duty to the LLC or its members, except to the extent he or it participates in the management of the LLC"]; 51 Am Jur 2d, *Limited Liability Companies* § 11 ["members of a limited liability company are like shareholders in a corporation in that they do not owe a fiduciary duty to each other or to the company, and that as long as members of a limited liability company are not acting in a managerial capacity, they do not have fiduciary duties to one another unless such fiduciary duties are set forth in the operating agreement"]). Because the individual defendants were not managers, they owed no fiduciary duty to Plaintiff as a matter of law.

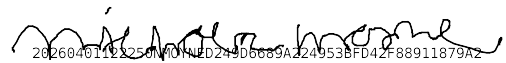
To the extent the plaintiff seeks to hold the individual defendants personally liable for the debts or obligations of Nassau John, the amended complaint fails to adequately plead such a claim. To pierce the corporate veil, a plaintiff must allege that the individual members exercised complete domination over the entity and that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury. (*Morris v. N.Y. State Dept. of Tax'n & Fin.*, 82 NY2d 135, 141 [1993]). The amended complaint contains no specific allegations that the individual defendants abused the corporate form, commingled funds, or used the

company to perpetrate a fraud. The plaintiff's grievances primarily concern the company's failure to secure financing—actions that reflect routine business operations and discretionary management decisions rather than veil-piercing misconduct.

Finally, the plaintiff's first cause of action seeks an order compelling the production of Nassau John's books and records under LLCL § 1102. However, LLCL § 1102 places the statutory obligation to maintain and provide access to corporate records directly on the limited liability company itself, not on its individual members or managers. The amended complaint demands that "Nassau" provide the records. The individual defendants are not the proper defendants for a demand to inspect the LLC's books and records, and this claim cannot proceed against them personally.

Accordingly, in motion sequence 001, the plaintiff's motion for a default judgment is denied. In motion sequence 002, the motion to dismiss is granted and the amended complaint is dismissed in its entirety as against Defendants Michael V. Santora and Anthony R. Milano, with prejudice. The remaining defendant shall file an answer to the amended complaint within 20 days unless the parties stipulate otherwise.

This constitutes the Decision and Order of the Court.

  
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<u>4/1/2026</u> DATE					<u>NICHOLAS W. MOYNE, J.S.C.</u>
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APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
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