

**242 Tenth Invs. LP v GVC 242 Tenth Sponsor, LLC**

2026 NY Slip Op 31494(U)

April 9, 2026

Supreme Court, New York County

Docket Number: Index No. 651242/2021

Judge: Joel M. Cohen

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: COMMERCIAL DIVISION PART 03M

-----X

242 TENTH INVESTORS LP,

Plaintiff,

- v -

GVC 242 TENTH SPONSOR, LLC, GVC 242 TENTH  
SPONSOR INV LLC

Defendants.

INDEX NO. 651242/2021

MOTION DATE 02/10/2026

MOTION SEQ. NO. 012

**DECISION + ORDER ON  
MOTION**

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 412, 413, 414, 415, 416, 417, 418, 419, 420, 421

were read on this motion for RESTITUTION.

On October 21, 2024, the Court granted summary judgment in favor of Defendant GVC 242 Tenth Sponsor, LLC (“Sponsor”) on Plaintiff 242 Tenth Investors LP’s (“Investor”) claims for declaratory judgment, breach of fiduciary duty, breach of contract, indemnification, and accounting (NYSCEF 372). The Court subsequently awarded Sponsor \$324,807.60 in attorney’s fees as the prevailing party pursuant to the terms of the parties’ agreement (*see id.* at 12–13; NYSCEF 403) and entered a judgment accordingly (NYSCEF 408). Investor wired payment of \$324,807.60 to Sponsor in satisfaction of the judgment on September 5, 2025 (NYSCEF 414 [“Arzhintar Affirm”] ¶ 3; NYSCEF 416).

On November 25, 2025, the Appellate Division, First Department “modified [this Court’s summary judgment order] ... to vacate so much of the order as granted [Sponsor’s] motion to dismiss the first [declaratory judgment/injunctive relief] and third [breach of contract] causes of action, so much of the order as denied [Investor’s] motion for summary judgment, and so much

of the order as declared that the removal of the Sponsor as general partner was invalid and void; to reinstate the first and third causes of action with the limitation that the third cause of action shall not seek monetary damages other than for nominal damages and an award of counsel fees if [Investor] prevails on the first cause of action,” and remanded the matter for “further proceedings on the summary judgment motions with respect to the reinstated causes of action” (*242 Tenth Inv'rs LP v GVC 242 Tenth Sponsor, LLC*, 243 AD3d 516, 516-17 [1st Dept 2025]). The Court’s order was otherwise affirmed (*id.*)

Investor now moves for an Order pursuant to CPLR 5015(d) and CPLR 5523 directing Sponsor to make restitution and payment to Investor in the amount of \$324,807.60 (*i.e.*, the amount awarded in this Court’s now-modified summary judgment decision and subsequent judgment), together with interest running from September 5, 2025. Sponsor opposes this motion. For the following reasons, Investor’s motion is granted other than with respect to payment of interest.

“The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct . . . [w]here a judgment or order is set aside or vacated, the court may direct and enforce restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal” (CPLR 5015 [d]). “Thus, ‘[CPLR 5015] (d) empowers a court that has set aside a judgment or order to restore the parties to the position they were in prior to its rendition, consistent with the court’s general equitable powers’. The essential inquiry for a court addressing a request for the equitable remedy of restitution is whether it is against equity and good conscience to permit a party to retain the money that is sought to be recovered” (*Hamway v Sutton*, 237 AD3d 92, 98 [1st Dept 2025] [citation omitted]).

Sponsor argues that it should not be required to return the attorney's fee award because Sponsor remains a prevailing party on *some* of Investor's claims, including breach of fiduciary duty, indemnification, and accounting. However, that was not the basis of the Court's attorney's fee award. Moreover, as noted above, the First Department specifically noted in its decision that Investor would be entitled to seek to recover its own fees if it is ultimately successful on its declaratory judgment claim. In short, the question of entitlement to attorney's fees (by either party, in whole or part) is an open issue at this juncture, and will depend on which party ultimately prevails on the remaining claims.

In those circumstances, the Court finds that the appropriate solution is to return the parties' to their respective financial conditions with respect to attorney's fees *prior to* the Court's summary judgment decision, pending a final decision on the merits of the remaining claims and entitlement to attorney's fees in this action in its entirety (*see Seward Park Hous. Corp. v Greater New York Mut. Ins. Co.*, 2008 NY Slip Op 33123[U] [Sup Ct, NY County 2008] ["[W]here, as here, it is clear that plaintiff has no right to continue to hold the money it must be returned to the defendant"], *affd as mod and remanded*, 63 AD3d 525 [1st Dept 2009]).

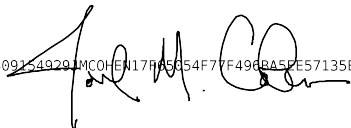
However, Investor has not demonstrated that it is entitled to an award of interest running from September 5, 2025 on the \$324,807.60 award. While it is true that Sponsor has had the benefit of holding the \$324,807.60 since September 5, 2025, the Judgment awarding Sponsor the \$324,807.60 did not include interest (*see* NYSCEF 408) and Investor has not demonstrated that awarding interest would be appropriate in such circumstances (*cf. Seward Park Hous. Corp.*, 63 AD3d at 525 [modifying the trial court's restitution order because it "failed to direct plaintiff's return of the portion of the prejudgment interest it received attributable to the \$1.6 million"]).

Accordingly, it is

**ORDERED** that Investor’s motion is **GRANTED IN PART**, insofar as Investor is entitled to prompt restitution from Sponsor in the amount of \$324,807.60; the request for interest on that amount running from September 5, 2025, is **denied**; and it is further

**ORDERED** that the parties’ counsel file a joint status update letter on NYSCEF within seven (7) days of the date of this Order with proposed next steps for resolving the remaining claims in dispute.

This constitutes the Decision and Order of the Court.

20260409154920JMC0HEW17R05054F77F496BA5FES7135E3D993E  


**JOEL M. COHEN, J.S.C.**

4/9/2026  
**DATE**

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input 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