

**Bagel Boss of NYC, Inc. v Bubbeleh Bagels Inc.**

2026 NY Slip Op 31498(U)

April 9, 2026

Supreme Court, New York County

Docket Number: Index No. 653212/2024

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 41M**

*Justice*

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BAGEL BOSS OF NYC, INC.,  
Plaintiff,

- v -

BUBBELEH BAGELS INC., SCOTT SANDERS,  
Defendant.

INDEX NO. 653212/2024  
MOTION DATE 05/05/2025  
MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 55, 56, 57, 66 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, it is

Before the Court is Plaintiff Bagel Boss of NYC, Inc.’s (“Plaintiff”) motion for summary judgment in lieu of complaint pursuant to CPLR § 3213 against Defendants Bubbeleh Bagels Inc. (“Bubbeleh”) and Scott Sanders (“Sanders”) (collectively, “Defendants”). Defendants oppose the motion and move by Order to Show Cause to vacate a default judgment previously entered against them on April 16, 2025. Previously, the Court agreed to effectively vacate the default to the extent of staying enforcement of the judgment and letting the defendant put in opposition papers to the motion for summary judgment in lieu of complaint.

For the reasons set forth below, Defendants’ motion to vacate the default judgment is now granted in its entirety and the judgment vacated and the plaintiff’s motion for summary judgment in lieu of complaint is denied.

This action arises from the sale of a bagel store business located at 263 First Avenue, New York, New York. On or about October 24, 2023, the parties entered into an Asset Purchase and Sale Agreement (“APA”) under which the defendants agreed to purchase the assets of the business for \$575,000. The APA contained representations that the assets would be transferred "free and clear of all mortgages, liens, encumbrances of record..." and that the seller would provide financial information demonstrating that the business's principal, Danny Gejerman (“Gejerman”), received a net income of \$230,000 over the prior 12 months.

On December 22, 2023, a UCC lien search conducted by Defendants' counsel, Richard Weinberg, Esq., revealed three substantial liens against the business, including a significant loan from the Small Business Administration (SBA), totaling over \$530,000. Despite this discovery, the parties proceeded with the transaction.

The defendants allege that on December 27, 2023, to protect the defendants from these newly discovered liabilities, the parties executed a written rider. The purported rider states that the promissory note to be signed at closing "will become null and void" if: (1) the business does not produce a net income of \$230,000 or greater within 12 months; (2) all UCC liens, including the SBA loan, are not satisfied; and (3) all outstanding payables are not satisfied within 180 days. The plaintiff vehemently denies executing this rider, arguing that it is a post-hoc forgery.

The parties closed the transaction on January 4, 2024. The defendants paid \$200,000 and executed a Promissory Note for the remaining \$375,000, unconditionally guaranteed by Sanders. The parties also executed a First Amendment to the APA, which explicitly acknowledged that the assets were subject to the SBA security interest.

The plaintiff demanded payment on the Note on April 11, 2024. When the defendants failed to pay, the plaintiff commenced this CPLR § 3213 action. After the defendants initially failed to file an opposition, a default judgment was entered on April 16, 2025, for \$424,534.11. The defendants subsequently retained counsel (who submitted that his failure to file a notice of appearance was due to his belief the matter would settle out of court, constituting law office failure) and moved to vacate the default and oppose the summary judgment motion on the grounds of fraudulent inducement and the existence of the December 27 rider. This Court stayed the execution of the judgment pending the resolution of these motions.

To vacate a default judgment under CPLR § 5015(a)(1), a defendant must demonstrate both a reasonable excuse for the default and a potentially meritorious defense. Defendants rely on law office failure, submitting an affirmation from Richard Weinberg, Esq., asserting he believed the matter was settling out of court and thus did not formally answer. Considering the strong public policy favoring the resolution of cases on their merits and finding that the defendants have articulated potentially meritorious defenses (as discussed below), the Court exercises its discretion to excuse the default. The default judgment entered April 16, 2025, is hereby vacated.

CPLR § 3213 provides an accelerated procedure for commencing an action based upon an instrument for the payment of money only. To establish a prima facie case, the plaintiff must submit the instrument and proof of the defendant's failure to make the payments called for by its terms (*see Zyskind v FaceCake Mktg. Tech., Inc.*, 101 AD3d 550, 551 [1st Dept 2012]). 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 (*id.*). As this Court noted during oral arguments on September 29, 2025, CPLR § 3213 is akin to allowing a party to "cut the line" to obtain expedited relief. This drastic remedy is strictly limited to matters where the obligation to pay can be ascertained without resorting to outside evidence. The instrument does not qualify if outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document (*see Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]).

The plaintiff has established a prima facie case by submitting the January 4, 2024 Promissory Note and Guaranty, which contain unconditional promises to pay, alongside proof of defendants' nonpayment. The burden thus shifts to the defendants to demonstrate triable issues of fact.

The defendants raise two primary defenses: (1) the Note is subject to conditions precedent established by the December 27, 2023 rider, and (2) they were fraudulently induced to enter the transaction. The defendants rely heavily on the document dated December 27, 2023, which explicitly states that the promissory note will become null and void unless the business generates \$230,000 in net income and the plaintiff satisfies all SBA liens and outstanding payables. Plaintiff asserts this document is an obvious mistake, nonsensical, and a poor forgery. Obviously, such a determination cannot be made without resolving questions of credibility or determining the authenticity of disputed signatures, determinations that are not suitable for summary judgment, let alone summary judgment on an expedited basis. The purported existence and validity of the December 27 rider presents a clear issue of material fact. If authentic, the rider establishes extrinsic conditions precedent that would take the Promissory Note outside the scope of an instrument for the payment of money only, rendering CPLR § 3213 relief inappropriate.

Even if the Court were to disregard the contested rider, the defendants have submitted highly compelling evidence raising a triable issue of fact regarding fraudulent inducement.

To successfully plead fraudulent inducement, a party must show a material misrepresentation, scienter, justifiable reliance, and damages. (*see Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]). The plaintiff argues that the defendants cannot show justifiable reliance because they had actual knowledge of the liens prior to the closing and failed to exercise their contractual due diligence rights to verify the store's income. While the plaintiff is correct that the defendants' actual knowledge of the liens prior to closing likely precludes justifiable reliance regarding the encumbrances, the allegations concerning the falsification of the business's income are much more severe. In opposition to the motion, the defendants have submitted the affidavit of Mohamed Frikeck, a former employee, who swore under penalty of perjury that the plaintiff's CEO, Danny Gejerman, explicitly directed him to ring up nonexistent sales to inflate the amount of revenue the store received during the exact period defendant Sanders was observing the business. While the APA provided the defendants with the right to observe the store and the right to cancel if the financial representations were unverified, the doctrine of due diligence would not shield a seller who actively falsifies the very data the buyer is supposed to observe. A party cannot be faulted for failing to discover the truth when the opposing party engages in active concealment or manipulation to thwart that discovery. The conflicting affidavits regarding the manipulation of sales data and the purported rider combined with the stark discrepancy between the represented income and the significant SBA liens, create genuine issues of material fact that require further discovery and perhaps trial.

Because genuine disputes of material fact exist regarding the authenticity of the December 27, 2023 rider and the allegations of active fraudulent inducement via falsified sales records, the plaintiff is not entitled to the expedited relief of CPLR § 3213.

Accordingly, it is hereby:

**ORDERED** that Defendants' motion to vacate the default judgment entered on April 16, 2025, is GRANTED, and the judgment is hereby vacated, and all restraints lifted and it is further

**ORDERED** that the plaintiff's motion for summary judgment in lieu of complaint pursuant to CPLR § 3213 is DENIED; and it is further

**ORDERED** that, pursuant to CPLR § 3213, Plaintiff's moving papers shall be deemed the complaint in this action, and Defendants' answering papers shall be deemed the answer; and it is further

**ORDERED** that the parties shall proceed with discovery in the normal course and are directed to appear for a preliminary conference on a date to be scheduled by the Part Clerk.

  
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4/9/2026  
**DATE**

**NICHOLAS W. MOYNE, J.S.C.**

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE