

Scotto v Beka Corp.

2026 NY Slip Op 31762(U)

April 21, 2026

Supreme Court, New York County

Docket Number: Index No. 160052/2023

Judge: Brendan T. Lantry

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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. BRENDAN T. LANTRY **PART** **46M**

Justice

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CHRISTINA SCOTTO,

Plaintiff,

- v -

BEKA CORP., HEADQUARTERS NEW YORK, LLC,
JAIME'S RESTAURANT CORP., MAYA'S RESTAURANT,
INC., NEW AGE LOUNGE, INC, NIKAC ASSOCIATES LLC,
SILK CORP, SIMPLICITY COMPUTER CORP., JIMMY KIM,
NERIM GJONBALAJ, NIKAC SANDER, ROGER MAROLDA,
SHAH HAQUE, JOHN DOES 1-10,

Defendants.

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INDEX NO. 160052/2023
MOTION DATE 12/29/2025
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 were read on this motion to/for DISCOVERY.

In the motion pending before the court, the parties each assert that they are entitled to deposition priority. For the reasons set forth herein, plaintiff’s motion for an order compelling defendants to appear for depositions is granted.

“A party desiring to take the deposition of any person upon oral examination shall give to each party twenty days' notice, unless the court orders otherwise. The notice shall be in writing, stating the time and place for taking the deposition, the name and address of each person to be examined...” (CPLR 3107). Pursuant to CPLR 3106(a),

After an action is commenced, any party may take the testimony of any person by deposition upon oral or written questions. Leave of the court, granted on motion, shall be obtained if notice of the taking of the deposition of a party is served by the plaintiff before that party's time for serving a responsive pleading has expired.

“As a general rule, in the absence of special circumstances, priority of examination belongs to the defendant if a notice therefor is served within the time to answer; otherwise, priority belongs

to the party who first serves a notice of examination” (*Bucci v Lydon*, 116 AD2d 520 [1st Dept 1986] [internal quotations and citations omitted]; see *Business Envelope Mfrs., Inc. v Williams*, 40 AD2d 597 [1st Dept 1972] (finding that, where plaintiff served its notice of depositions after issue was joined by service of answer and defendants served their notice of depositions the following day, plaintiff was clearly entitled to priority of examination)). “Priority is deemed abandoned, however, where a party fails diligently to pursue disclosure and is dilatory, thereby impeding the progress of the litigation” (*Bucci*, 116 AD2d at 521 [internal citations omitted]).

Plaintiff argues that defendants have forfeited the normal deposition priority as they have failed to notice the deposition of plaintiff. The court agrees. Here, plaintiff commenced this action by filing a summons and complaint dated October 17, 2023 and October 11, 2023, respectively. Defendants filed an answer on December 14, 2023 and an amended answer on January 17, 2024. On February 7, 2024, plaintiff filed notices of deposition, indicating the intent to depose numerous witnesses at designated dates, times, and locations. There is nothing in the record to indicate that defendants filed notice of deposition prior to, alongside, or after the filing of their answer.

In their memorandum of law in opposition to plaintiff’s instant motion, defendants direct the court’s attention to email correspondence dated December 17, 2024, wherein defense counsel emailed plaintiff’s counsel stating, in relevant part, “[w]e have to take your client’s deposition” (see NYSCEF Doc. No. 46). Approximately nine months later, on September 12, 2025, defense counsel again emailed plaintiff’s counsel stating, in relevant part, “please propose dates for plaintiff’s deposition in October” (*id.*). Not only do these writings not comply with the requirements of CPLR 3107, they were conveyed beyond defendants’ time to answer the pleadings and long after plaintiff properly filed notices of deposition. Defendants further assert, in their opposition dated January 13, 2026, that they had “just recently served plaintiff’s counsel with a

deposition notice for plaintiff's deposition" (NYSCEF Doc. No. 44). Not only was the court not provided with proof of same, but, again, such notice would be beyond defendants' time to answer the pleadings and long after plaintiff properly filed notices of deposition.

The record clearly demonstrates that defendants did not serve notice of deposition within their time to answer and that plaintiff served its notices of deposition first. Therefore, in accordance with a plain text reading of CPLR 3106, as well as the holdings in *Bucci* and *Business Envelope Mfrs., Inc.*, plaintiff is entitled to priority of examination. The court is unpersuaded by defendants' assertion that plaintiff abandoned their priority, as the record demonstrates that plaintiff has made consistent and diligent efforts to move litigation along and pursue discovery in this matter.

Next, the court would be remiss to not address defense counsel's May 2, 2025 email to plaintiff's counsel. Counsel for defendants, in what appears to be a midday rage in response to a seemingly standard scheduling discussion amongst counsel, sent a wholly inappropriate and disturbing message to counsel for plaintiff. The email, sent at 2:56 PM, reads as follows:

Since you are now my calendar girl and think your so smart, lets see how brave and confident you are in your abilities. I will put my money where my mouth is...I will put up any one my Ferraris or my Rolls or my Bentley (You can choose which one I put up) and you can put up either your minivan or your 95 hyunaidi elantra if you want to challenge me about my trial calendar. Lets go! Sit down and calm down buddy, you are out of your lane and league here. Pick a date a date I proposed in June or step in the ring with me and challenge me like a real man (NYSCEF Doc. No. 57).

The court condemns such behavior from an officer of the court and takes this opportunity to remind counsel that in any courtroom, especially this one, the attorneys are to treat one another with dignity and respect. Any deviation from same will not be tolerated and sanctions may be imposed.

As the court grants plaintiff's motion on the grounds discussed, *supra*, the court need not address the parties' remaining contentions.


Accordingly, it is hereby

ORDERED that plaintiff's motion to compel is granted; and it is further

ORDERED that defendant shall, within 45 days of this order, produce witnesses with knowledge of the facts for deposition, at the office of counsel for plaintiff, on a date and at a time convenient for the parties; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 103 of 71 Thomas Street, New York, New York, on June 10, 2026 at 9:30 am.

This constitutes the decision and order of the court.

<u>4/21/2026</u> DATE	 BRENDAN T. LAURY, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT