

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Arnold Schwartz v Anthony Abbatine, et al.

2026 NY Slip Op 01812 · No. 2024-05354 · Decided March 25, 2026

SUMMARY

The New York Appellate Division, Second Department, affirmed an order denying defendants’ motion to dismiss an action seeking recovery under personal guaranties. The court held that evidence of partial payments raised a factual question regarding revival of the statute of limitations and that the underlying debtor entities were not necessary parties because the creditor could sue the guarantors without first suing the debtors.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Hector D. LaSalle, P.J.; Cheryl E. Chambers, J.; William G. Ford, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	March 25, 2026
DOCKET	2024-05354
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order denying their pre-answer motion under CPLR 3211(a) to dismiss an action seeking, among other relief, recovery on personal guaranties.
STANDARD OF REVIEW	On a CPLR 3211(a)(5) motion asserting expiration of the statute of limitations, the defendant must make a prima facie showing that the limitations period expired; the burden then shifts to the plaintiff to raise a question of fact concerning tolling or inapplicability. On a CPLR 3211(a)(10) motion, the court determines whether a person is a necessary party under CPLR 1001(a).
PRECEDENTIAL VALUE	Published opinion; precedential under the applicable New York appellate rules, although the opinion is uncorrected and subject to revision before publication in the Official Reports.

PARTIES

Anthony Abbatine, Tammy Abbatine v. Arnold Schwartz

TOPICS

motions to dismiss

statute of limitations

joinder

contracts

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QUESTIONS PRESENTED

1. Whether the complaint should be dismissed under CPLR 3211(a)(5) as barred by the six-year statute of limitations.
2. Whether partial payments and related communications raised a question of fact as to revival of the statute of limitations.
3. Whether Frozen Ropes Baseball Company, LLC, and Warwick Yard, LLC, were necessary parties under CPLR 1001(a) because the action sought recovery from their guarantors.

HOLDINGS

1. Although defendants established prima facie that the limitations period had expired, the plaintiff raised a question of fact as to whether partial payments renewed the statute of limitations with respect to the note and loans as to both defendants. Dismissal under CPLR 3211(a)(5) was therefore properly denied.
2. Frozen Ropes Baseball Company, LLC, and Warwick Yard, LLC, were not necessary parties because the agreements did not require the plaintiff to sue the debtors before suing the guarantors, and a creditor may sue a guarantor upon the debtor's default without first suing the debtor.

KEY QUOTATIONS

"There is a 'long-standing common law rule' that partial payment of a debt, if made under 'circumstances from which a promise to honor the obligation may be inferred,' will operate to start the statute of limitations running anew from the time the partial payment is made" (2026 NY Slip Op 01812 at 1)

"To demonstrate that the statute of limitations has been renewed by a partial payment, it must be shown that the payment was accompanied by circumstances amounting to 'an absolute and unqualified acknowledgment by the debtor of more being due, from which a promise may be inferred to pay the remainder'" (2026 NY Slip Op 01812 at 1-2)

"Necessary parties are those 'who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action'" (2026 NY Slip Op 01812 at 2)

FACTUAL BACKGROUND

The complaint alleged that Anthony Abbatine personally guaranteed a 2010 promissory note executed by Frozen Ropes Baseball Company, LLC, for \$1,335,000. The Abbatines allegedly guaranteed two Warwick Yard, LLC obligations: a \$750,000 loan made in 2015 and a \$700,000 addendum loaned in 2016, both of which became due by July 1, 2016. The debtor entities allegedly defaulted, and the plaintiff produced emails, text exchanges, and payment statements showing partial payments by Anthony as late as September 2019.

PROCEDURAL HISTORY

Arnold Schwartz commenced the action against Anthony and Tammy Abbatine based on alleged personal guaranties of obligations owed by Frozen Ropes Baseball Company, LLC, and Warwick Yard, LLC. Before answering, defendants moved to dismiss based on expiration of the statute of limitations and failure to join necessary parties. The Supreme Court, Suffolk County, denied the motion on those grounds, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- *Comito v Z & N Enters. Corp.*, 230 AD3d 469, 471-472
- *HSBC Bank USA, N.A. v Macaulay*, 187 AD3d 721, 723
- *Costello v Curan & Ahlers, LLP*, 224 AD3d 734, 736-737
- *Roth v Michelson*, 55 NY2d 278, 281
- *RTT Holdings, LLC v Nacht*, 206 AD3d 834, 836
- *Ji Juan Lin v Bo Jin Zhu*, 191 AD3d 652, 653

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