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 · civil procedure

PRACTICE AREAS

civil procedure · commercial litigation · contracts · appellate procedure

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

OPINION

PER CURIAM.

Schwartz v Abbatine (2026 NY Slip Op 01812) Schwartz v Abbatine 2026 NY Slip Op 01812 Decided on March 25, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on March 25, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department HECTOR D. LASALLE, P.J. CHERYL E. CHAMBERS WILLIAM G. FORD JAMES P. MCCORMACK, JJ. 2024-05354 (Index No. 627491/23) [*1]Arnold Schwartz, respondent, v Anthony Abbatine, et al., appellants.

David A. Gallo & Associates, LLP, Manhasset, NY (Robert M. Link of counsel), for appellants. Pick & Zabicki LLP, New York, NY (Eric C. Zabicki of counsel), for respondent. DECISION & ORDER In an action, inter alia, to recover on personal guaranties, the defendants appeal from an order of the Supreme Court, Suffolk County (Alison J. Napolitano, J.), dated March 18, 2024.

The order, insofar as appealed from, denied the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint. ORDERED that the order is affirmed insofar as appealed from, with costs. This action was commenced on November 3, 2023, against Anthony Abbatine and Tammy Abbatine.

As alleged in the complaint, Anthony personally guaranteed a promissory note executed on or about October 20, 2010, by Frozen Ropes Baseball Company, LLC (hereinafter Frozen Ropes), in favor of the plaintiff in the principal sum of $1,335,000, due in three years (hereinafter the Frozen Ropes note).

The complaint also alleged that the defendants personally guaranteed repayment under (1) an agreement executed on or about July 1, 2015, pursuant to which the plaintiff lent the sum of $750,000 to Warwick Yard, LLC (hereinafter Warwick Yard), with a maturation date of December 31, 2015 (hereinafter the Warwick Yard loan), and (2) a supplemental "addendum" agreement executed on or about March 1, 2016, pursuant to which the plaintiff lent the additional sum of $700,000 to Warwick Yard (hereinafter the Warwick Yard addendum).

Under the Warwick Yard addendum, repayment of the Warwick Yard loan and the Warwick Yard addendum both became due on July 1, 2016. According to the complaint, Frozen Ropes and Warwick Yard defaulted and there were balances due under the Frozen Ropes note, the Warwick Yard loan, and the Warwick Yard addendum that the defendants were required to pay. Prior to interposing an answer, the defendants moved pursuant to CPLR 3211(a) to dismiss the complaint, asserting, inter alia, that the complaint should be dismissed based on the expiration of the statute of limitations and the failure to join a necessary party.

The Supreme Court, among other things, denied the defendants' motion on those grounds. The defendants appeal. "On a motion to dismiss a complaint pursuant to CPLR 3211(a)(5) on the ground that the statute of limitations has expired, the moving defendant must establish, prima facie, that the time in which to commence the action has expired" (Comito v Z & N Enters.

Corp., 230 AD3d 469, 471). "If such prima facie showing is made, the burden then shifts to the plaintiff to raise a question of fact [*2]as to whether the statute of limitations is tolled or is otherwise inapplicable" (id.).

Here, the defendants contended that the plaintiff failed to commence this action within the six-year statute of limitations (see CPLR 213[2]). The defendants met their prima facie burden because neither party disputed that the time within which to commence this action had expired (see HSBC Bank USA, N.A. v Macaulay, 187 AD3d 721, 723).

However, in opposition to the defendants' prima facie showing, the plaintiff raised a question of fact as to whether the statute of limitations was renewed with respect to the note and the loans by partial payments made by Anthony. "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" (Costello v Curan & Ahlers, LLP, 224 AD3d 734, 736, quoting Roth v Michelson, 55 NY2d 278, 281).

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" (id. [internal quotation marks omitted]; see RTT Holdings, LLC v Nacht, 206 AD3d 834, 836). "[T]here need not be a writing in order for a plaintiff to demonstrate that the statute of limitations is... revived by reason of partial payment" (Costello v Curan & Ahlers, LLP, 224 AD3d at 737).

Here, the plaintiff submitted emails, text exchanges, and payment statements showing partial payments as late as September 2019. This evidence raised questions of fact as to whether the statute of limitations was revived with respect to the note and the loans as to both defendants (see Comito v Z & N Enters. Corp., 230 AD3d at 471-472).

Therefore, the Supreme Court properly denied dismissal of the complaint pursuant to CPLR 3211(a)(5). 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" (CPLR 1001[a]; see Ji Juan Lin v Bo Jin Zhu, 191 AD3d 652, 653).

Here, there is no evidence that the agreements required the plaintiff to sue the debtors before he could sue the guarantors. In the absence of such an agreement, on default of the debtor, the creditor may sue the guarantor without first suing the debtor (see General Obligations Law § 15-701).

Therefore, the debtor entities, Frozen Ropes and Warwick Yard, are not necessary parties to this action, and the Supreme Court properly denied dismissal of the complaint pursuant to CPLR 3211(a)(10). The parties' remaining contentions are either improperly raised for the first time on appeal or without merit. LASALLE, P.J., CHAMBERS, FORD and MCCORMACK, JJ., concur.

ENTER: Darrell M. Joseph Clerk of the Court