APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Newmark Partners, L.P. v. Singer

2026 NY Slip Op 03923 (1st Dep't 2026) · No. Index No. 659471/24; Appeal Nos. 6942-6943; Case Nos. 2025-06295, 2026-00711 · Decided June 23, 2026

SUMMARY

The Appellate Division, First Department affirmed a $3,028,109.59 judgment for Newmark Partners, L.P. under a rescission and settlement agreement and dismissed an appeal from the underlying order as subsumed in the judgment appeal. The court held that the agreement qualified as an instrument for the payment of money only under CPLR 3213, that joinder of an additional jointly and severally liable party was permissible rather than necessary, and that contractual non-reliance provisions barred the defendants' fraud defenses under Delaware law. The court also concluded that document-delivery provisions did not constitute conditions precedent to payment.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, P.J.; Scarpulla, J.; González, J.; Rodriguez, J.; O'Neill Levy, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	June 23, 2026
DOCKET	Index No. 659471/24; Appeal Nos. 6942-6943; Case Nos. 2025-06295, 2026-00711
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from a judgment entered after Supreme Court granted plaintiff's motion for summary judgment in lieu of complaint under CPLR 3213 and from the underlying order denying defendants' cross-motion to dismiss.
STANDARD OF REVIEW	The court reviewed whether plaintiff established a prima facie right to recovery under CPLR 3213 and whether defendants raised a triable issue of fact or a legally sufficient defense.
PRECEDENTIAL VALUE	Published

PARTIES	Simon Singer et al. v. Newmark Partners, L.P.

TOPICS

summary judgment · civil procedure · joinder · contracts · commercial litigation

PRACTICE AREAS

civil procedure · appellate procedure · contracts · commercial litigation · remedies

QUESTIONS PRESENTED

1. Whether Elchonon Schwartz was an indispensable or necessary party whose absence required dismissal.
2. Whether the Rescission and Settlement Agreement, particularly section 5.3, was an instrument for the payment of money only enforceable under CPLR 3213.
3. Whether plaintiff established a prima facie case for summary recovery under CPLR 3213.
4. Whether defendants raised a triable issue through a fraudulent-inducement, fraudulent-omission, or fraudulent-concealment defense.
5. Whether document-delivery provisions in other parts of the agreement constituted a condition precedent to defendants' payment obligations.

HOLDINGS

1. Dismissal was not required because Schwartz and defendants were jointly and severally liable, making CPLR 1002 governing permissible joinder relevant rather than CPLR 1001 governing necessary joinder.
2. Section 5.3 of the Rescission and Settlement Agreement was an instrument for the payment of money only within the meaning of CPLR 3213.
3. Plaintiff established a prima facie case for recovery under CPLR 3213 by submitting evidence of the amounts due, including an attorney affirmation based on personal knowledge and documentation of payments and the bankruptcy trustee's clawback.
4. Defendants did not raise a triable issue of fact through their fraud defenses because the agreement's non-reliance provision barred reliance on extra-contractual representations and defendants supplied no competent evidence supporting fraudulent inducement.
5. The document-delivery provisions were not conditions precedent to defendants' payment and did not alter their promise to pay; they therefore did not preclude CPLR 3213 treatment of section 5.3.

KEY QUOTATIONS

> "*The court also properly held that the Rescission and Settlement Agreement (the Agreement) is an instrument for the payment of money only (CPLR 3213).*" ([*1])

> "*A non-reliance clause such as section 4.2 also bars a claim of fraudulent omission or concealment*" ([*2])

FACTUAL BACKGROUND

Defendants entered into a Rescission and Settlement Agreement requiring them to make settlement payments in defined installments. The agreement stated that the operative payment provision was an agreement for the payment of money only and authorized enforcement under CPLR 3213. Plaintiff submitted evidence of the amounts due, including payments made by Schwartz parties and a $1.15 million bankruptcy-trustee clawback, while defendants asserted defenses based on fraud and alleged document-delivery conditions.

PROCEDURAL HISTORY

Supreme Court, New York County, granted plaintiff's motion for summary judgment in lieu of complaint and denied defendants' cross-motion to dismiss. Judgment was entered on October 3, 2025, in plaintiff's favor for $3,028,109.59. The Appellate Division unanimously affirmed the judgment and dismissed the appeal from the order as subsumed in the judgment appeal.

DISPOSITION

affirmed

CASES CITED

- Marjan Intl. Corp. v Lillian August Designs, Inc., 225 AD3d 408, 408 [1st Dept 2024]
- RAA Mgt., LLC v Savage Sports Holdings, Inc., 45 A3d 107, 117 [Del 2012]
- Prairie Capital III, L.P. v Double E Holding Corp., 132 A3d 35, 51-53 [Del Ch 2015]
- Woodbridge Vil. Assoc. v Goren, 188 AD2d 293, 293 [1st Dept 1992]
- Chemical Bank v Alco Gems Corp., 151 AD2d 366, 368 [1st Dept 1989]
- Allied Irish Banks, PLC v Young Men's Christian Assn. of Greenwich, 36 Misc 3d 216, 220 [Sup Ct, NY County 2012], affd 105 AD3d 516 [1st Dept 2013]

OPINION

Newmark Partners, L.P. v. Singer 2026 NY Slip Op 03923

PER CURIAM.

Newmark Partners, L.P. v Singer - 2026 NY Slip Op 03923 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Newmark Partners, L.P. v Singer 2026 NY Slip Op 03923 June 23, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Newmark Partners, L.P., Respondent, v Simon Singer et al., Appellants. Decided and Entered: June 23, 2026 Index No. 659471/24|Appeal No. 6942-6943|Case No. 2025-06295, 2026-00711| Before: Renwick, P.J., Scarpulla, González, Rodriguez, O'neill Levy, JJ. Morrison Cohen LLP, New York (Y. David Scharf of counsel), for appellants. Cantor Fitzgerald, New York (Allison Waks of counsel), for respondent. [*1] Judgment, Supreme Court, New York County

(Anar Rathod Patel, J.), entered October 3, 2025, against defendants and in favor of plaintiff in the amount of $3,028,109.59, unanimously affirmed, with costs. Appeal from order, same court and Justice, entered on or about August 26, 2025, which granted plaintiff's motion for summary judgment in lieu of complaint and denied defendants' cross-motion to dismiss, unanimously dismissed, without costs, as subsumed in the appeal from the judgment. Supreme Court properly declined to dismiss the complaint on the ground that Elchonon Schwartz is an indispensable party who should have been joined. Defendants moved to dismiss pursuant to CPLR 1001, which governs necessary joinder of parties; however, only section 1002, governing permissible joinder of parties, is relevant because Schwartz and defendants are jointly and severally liable under the Rescission and Settlement Agreement (see CPLR 1002[b]). The court also properly held that the Rescission and Settlement Agreement (the Agreement) is an instrument for the payment of money only (CPLR 3213). Defendants unambiguously agreed that section 5.3 of the Agreement, the operative section that obligated them to make a settlement payment in certain defined installments, was "an Agreement for the payment of money only" and that "failure to make payment . . . shall entitle [plaintiff] to enforce the payment obligations . . . pursuant to . . . CPLR 3213." Accordingly, we need not determine whether section 5.3 would be considered an instrument for the payment of money only under applicable case law (see Marjan Intl. Corp. v Lillian August Designs, Inc., 225 AD3d 408, 408 [1st Dept 2024]). Plaintiff made a prima facie case for recovery under CPLR 3213 by submitting, among other things, the affirmation of an attorney who had personal knowledge of the sums due, based on his involvement in negotiating the Agreement and monitoring compliance therewith. It also submitted its October 25, 2024 letter to defendants, setting forth the amounts paid by Schwartz and the Elchonon Schwartz Family Trust (the Schwartz Parties), as well as the bankruptcy trustee's clawback of $1.15 million of that sum. [*2] Defendants failed to identify any issue that would preclude summary recovery on the instrument. Their contention that section 4.2 of the Agreement is a standard merger clause that does not preclude their fraud defense is meritless. In section 4.2, defendants plainly covenanted that they had "not been influenced to any extent whatsoever in [entering into the Agreement] by any other Party or by any other person or entity, except for those representations, statements and promises expressly set forth" in the Agreement. Under Delaware law, which governs the Agreement, "a party cannot promise . . . that it will not rely on promises and representations outside of the agreement and then shirk its own bargain" (RAA Mgt., LLC v Savage Sports Holdings, Inc., 45 A3d 107, 117 [Del 2012]). A non-reliance clause such as section 4.2 also bars a claim of fraudulent omission or concealment (see Prairie Capital III, L.P. v Double E Holding Corp., 132 A3d 35, 51-53 [Del Ch 2015]). In any event, defendants failed to raise a triable issue of fact as to their fraudulent inducement defense because they did not support the defense with competent evidence (see Woodbridge Vil. Assoc. v Goren, 188 AD2d 293, 293 [1st Dept 1992]; Chemical Bank v Alco Gems Corp., 151 AD2d 366, 368 [1st Dept 1989]). Finally, plaintiff's and the Schwartz Parties' delivery of documents to each other was not a condition precedent to defendants' payment, nor did it alter their promise of payment; thus, these terms in other parts of the Agreement did not preclude CPLR 3213 treatment for section 5.3 (see Allied Irish Banks, PLC v Young Men's Christian Assn. of Greenwich, 36 Misc 3d 216, 220 [Sup Ct, NY County 2012], affd 105 AD3d 516 [1st Dept 2013]). We have considered defendants' remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 23, 2026

PER CURIAM.

Newmark Partners, L.P. v Singer - 2026 NY Slip Op 03923 Newmark Partners, L.P. v Singer 2026 NY Slip Op 03923 June 23, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Newmark Partners, L.P., Respondent, v Simon Singer et al., Appellants. Decided and Entered: June 23, 2026 Index No. 659471/24|Appeal No. 6942-6943|Case No. 2025-06295, 2026-00711| Before: Renwick, P.J., Scarpulla, González, Rodriguez, O'Neill Levy, JJ. Morrison Cohen LLP, New York (Y. David Scharf of counsel), for appellants. Cantor Fitzgerald, New York (Allison Waks of counsel), for respondent. [*1] Judgment, Supreme Court, New York County (Anar Rathod Patel, J.), entered October 3, 2025, against defendants and in favor of plaintiff in the amount of $3,028,109.59, unanimously affirmed, with costs. Appeal from order, same court and Justice, entered on or about August 26, 2025, which granted plaintiff's motion for summary judgment in lieu of complaint and denied defendants' cross-motion to dismiss, unanimously dismissed, without costs, as subsumed in the appeal from the judgment. Supreme Court properly declined to dismiss the complaint on the ground that Elchonon Schwartz is an indispensable party who should have been joined. Defendants moved to dismiss pursuant to CPLR 1001, which governs necessary joinder of parties; however, only section 1002, governing permissible joinder of parties, is relevant because Schwartz and defendants are jointly and severally liable under the Rescission and Settlement Agreement (see CPLR 1002[b]). The court also properly held that the Rescission and Settlement Agreement (the Agreement) is an instrument for the payment of money only (CPLR 3213). Defendants unambiguously agreed that section 5.3 of the Agreement, the operative section that obligated them to make a settlement payment in certain defined installments, was "an Agreement for the payment of money only" and that "failure to make payment . . . shall entitle [plaintiff] to enforce the payment obligations . . . pursuant to . . . CPLR 3213." Accordingly, we need not determine whether section 5.3 would be considered an instrument for the payment of money only under applicable case law (see Marjan Intl. Corp. v Lillian August Designs, Inc., 225 AD3d 408 , 408 [1st Dept 2024]). Plaintiff made a prima facie case for recovery under CPLR 3213 by submitting, among other things, the affirmation of an attorney who had personal knowledge of the sums due, based on his involvement in negotiating the Agreement and monitoring compliance therewith. It also submitted its October 25, 2024 letter to defendants, setting forth the amounts paid by Schwartz and the Elchonon Schwartz Family Trust (the Schwartz Parties), as well as the bankruptcy trustee's clawback of $1.15 million of that sum. [*2] Defendants failed to identify any issue that would preclude summary recovery on the instrument. Their contention that section 4.2 of the Agreement is a standard merger clause that does not preclude their fraud defense is meritless. In section 4.2, defendants plainly covenanted that they had "not been influenced to any extent whatsoever in [entering into the Agreement] by any other Party or by any other person or entity, except for those representations, statements and promises expressly set forth" in the Agreement. Under Delaware law, which governs the Agreement, "a party cannot promise . . . that it will not rely on promises and representations outside of the agreement and then shirk its own bargain" (RAA Mgt., LLC v Savage Sports Holdings, Inc., 45 A3d 107, 117 [Del 2012]). A non-reliance clause such as section 4.2 also bars a claim of fraudulent omission or concealment (see Prairie Capital III, L.P. v Double E Holding Corp., 132 A3d 35, 51-53 [Del Ch 2015]). In any event, defendants failed to raise a triable issue of fact as to their fraudulent inducement defense because they did not support the defense with competent evidence (see Woodbridge Vil. Assoc. v Goren, 188 AD2d 293, 293 [1st Dept 1992]; Chemical Bank v Alco Gems Corp., 151 AD2d 366, 368 [1st Dept 1989]). Finally, plaintiff's and the Schwartz Parties' delivery of documents to each other was not a condition precedent to defendants' payment, nor did it alter their promise of payment; thus, these terms in other parts of the Agreement did not preclude CPLR 3213 treatment for section 5.3 (see Allied Irish Banks, PLC v Young Men's Christian Assn. of Greenwich, 36 Misc 3d 216, 220 [Sup Ct, NY County 2012], affd 105 AD3d 516 [1st Dept 2013]). We have considered defendants' remaining contentions and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 23, 2026