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COURT OF APPEALS  
STATE OF NEW YORK

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GIBSON, DUNN & CRUTCHER,  
  
Appellant,  
  
-against-  
  
KOUKIS,  
  
Respondent.  
-----

NO. 23

20 Eagle Street  
Albany, New York  
February 12, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUSTICE LISA M. FISHER

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Chrishanda Sassman-Reynolds  
Official Court Transcriber

1 CHIEF JUDGE WILSON: Gibson, Dunn v. Koukis.  
2 Here we go. Thank you.

3 MR. ROKOSKY: May it please the court. Seth  
4 Rokosky for Gibson Dunn. May I please reserve four minutes  
5 for rebuttal?

6 CHIEF JUDGE WILSON: Yes.

7 MR. ROKOSKY: The Appellate Division erred  
8 because there are, at minimum, factual disputes regarding  
9 whether Koukis waived jurisdictional defenses asserted in  
10 his motion through his counsel of record, Gil Santamarina,  
11 an attorney admitted to practice in the State of New York  
12 and an officer of the court who has never once corroborated  
13 Koukis' claims. Even assuming Koukis is not equitably  
14 estopped from challenging Santamarina's authority, and he  
15 is, Koukis has failed to meet his burden of demonstrating  
16 unauthorized appearance of counsel as a matter of law.

17 JUDGE SINGAS: But what, specifically, did Koukis  
18 actually do to lead you to believe that Santamarina was  
19 authorized to represent him?

20 MR. ROKOSKY: Well, the answer to that question,  
21 Your Honor, is - - - I have to start by the answer to that  
22 question, which is that we don't actually know exactly what  
23 transpired because Gibson Dunn has never received any  
24 discovery whatsoever on the intricacies of the attorney-  
25 client relationship between Mr. Koukis and Santamarina.

1           However, based on the moving papers and the existing - - -  
2           you know, the existing record that we have to date on the  
3           motion, there is, at the very least, sufficient evidence to  
4           conclude that Mr. Koukis authorized his codefendant,  
5           Joseph, to retain Santamarina to represent him on - - -

6                         JUDGE CANNATARO: What - - - what - - -

7                         MR. ROKOSKY: - - - behalf of this litigation.

8                         JUDGE CANNATARO: What evidence, specifically,  
9           are you referring to?

10                        MR. ROKOSKY: Well, Your Honor, this email is in  
11           - - - in the email - - - this is in the email  
12           correspondence.

13                        JUDGE CANNATARO: This is the email where he - -  
14           - Joseph said, we've had a lot of conversations about this,  
15           and you knew about our corporate lawyer. Is that the one  
16           you're - - -

17                        MR. ROKOSKY: That's right.

18                        JUDGE CANNATARO: - - - referring to?

19                        MR. ROKOSKY: There's - - - there's - - - there's  
20           a series of emails at record 167, 171, 183 to 186, in which  
21           they talk about they've had repeated conversations for  
22           years over what's being done in the litigation.

23                        JUDGE CANNATARO: Did they talk about that? Or  
24           does Joseph talk about that?

25                        MR. ROKOSKY: Well, Joseph talks about that with

1 Mr. Koukis and with another defendant.

2 JUDGE CANNATARO: Does - - - and does Mr. Koukis  
3 engage with that conversation?

4 MR. ROKOSKY: Your Honor, he certainly doesn't  
5 deny what Joseph says.

6 JUDGE CANNATARO: No. It's met with a sort of  
7 stony silence. Like, what's going on here? Did he get the  
8 email? Did he read this part? It's - - -

9 MR. ROKOSKY: That's - - - that's correct.

10 JUDGE CANNATARO: There's nothing there.

11 MR. ROKOSKY: That - - - well, but Your Honor, in  
12 addition to the email correspondence, we have other things  
13 in the record here. We have the retainer agreement, which  
14 Joseph signed unambiguously on behalf of all of the  
15 defendants. That's also consistent with, as I said,  
16 repeated court filings for a period of nearly two years, by  
17 an officer of the court, on behalf of Mr. Koukis, who has  
18 never once stated that he lacked authority to represent  
19 Koukis.

20 Even after the judgment, Mr. Santamarina filed a  
21 notice of appeal on behalf of Mr. Koukis and represented  
22 him by filing that notice of appeal. There is simply  
23 nothing other than Mr. Koukis' say-so two years after the  
24 fact - - -

25 CHIEF JUDGE WILSON: Supreme court had given you



1           discovery? Jurisdictional discovery. But that never  
2           occurred; is that right?

3                   MR. ROKOSKY: Your Honor, we - - - no, we never  
4           received any jurisdictional discovery.

5                   CHIEF JUDGE WILSON: No? But had the supreme  
6           court scheduled a hearing and authorized you to get  
7           discovery in advance of the hearing, and that just never  
8           took place? Or I'm mistaken?

9                   MR. ROKOSKY: No. No, Your Honor. supreme court  
10          granted discovery - - - not discovery. Granted a traverse  
11          hearing on the issue of personal jurisdiction, not on the  
12          issue of Santamarina's appearance. In this particular  
13          action, Supreme Court concluded that as a matter of law,  
14          Santamarina lacked authority to represent Koukis. That  
15          there wasn't even sufficient evidence in the moving papers  
16          to justify a hearing and discovery just to determine the  
17          facts of what occurred.

18                  JUDGE TROUTMAN: And this was a motion to vacate?

19                  MR. ROKOSKY: That's correct, Your Honor. This  
20          was a motion to vacate, supported by a conclusory affidavit  
21          that Mr. Koukis put in. He essentially recounts the public  
22          filings that have happened in this case. And then he  
23          issues a number of statements. He says, I did not  
24          represent - - - or I did not authorize Mr. Santamarina to  
25          represent me. I did not authorize Nomellini to act on my

1           behalf. I did not authorize Joseph to act on my behalf.  
2           But provides virtually no factual content, no factual  
3           detail about what did occur, when in fact he knew it, and  
4           what happened. Which is simply why we're all - - - all  
5           we're asking for is a hearing to determine what, in fact,  
6           took place.

7                         JUDGE CANNATARO: Can you tell me what the  
8           standard of review is regarding the court's decision about  
9           whether or not to grant jurisdictional discovery?

10                        MR. ROKOSKY: Well, Your Honor, as this court has  
11           held - - - not held, but stated on several occasions, if  
12           there are factual disputes on a material question that goes  
13           to agency, those factual disputes need to be resolved at an  
14           evidentiary hearing when the court can actually find the  
15           facts and determine whether or not the movant has met their  
16           burden of demonstrating unauthorized appearance of counsel  
17           or not. On a simple motion, the movant, of course, bears  
18           the burden of demonstrating an entitlement to relief on the  
19           motion.

20                        And what we would submit is that a simple  
21           affidavit that just issues a one-sentence conclusory denial  
22           of authority is not sufficient to meet his burden. But at  
23           the very least, it - - - it's not sufficient to ascribe  
24           zero weight to the repeated statements of both his counsel  
25           of record and his codefendant that Koukis did, in fact - -

1 - or did, in fact, authorize his attorney to represent him  
2 in this action. And what I would note is, even if it were  
3 the case that there were a misunderstanding as to whether  
4 or not Santamarina had authority to - - - you know, appear  
5 in the action; file a stipulation noting that he was  
6 waiving jurisdictional defenses; file an answer, also  
7 waiving jurisdictional defenses; litigate the case for two  
8 years, there is also evidence, sufficient evidence in the  
9 record, to conclude that Koukis was aware that this  
10 litigation was being done on his behalf at least by 2018,  
11 which is when Santamarina appeared.

12 JUDGE CANNATARO: And does he have to protest it  
13 in order to solidify his claim of lack of authority?

14 MR. ROKOSKY: Well, Your Honor, there - - - we  
15 would - - - the court would, at a hearing would have to  
16 determine what, in fact, he did and did not know. I mean,  
17 certainly he would have to come forward - - -

18 JUDGE CANNATARO: If - - - if it - - -

19 MR. ROKOSKY: - - - with evidence - - -

20 JUDGE CANNATARO: If it were established that he  
21 just sat by silently while Mr. Santamarina waived defenses  
22 and - - - you know, did whatever he did, would that be  
23 sufficient to support a finding subsequent that  
24 representation that - - - that Santamarina had Koukis'  
25 authorization to represent him?

1 MR. ROKOSKY: If there were affirmative evidence  
2 in the record, which there is here that he did in fact  
3 know, then the preponderance of the evidence in - - - on  
4 the motion record and at the hearing, would demonstrate  
5 that he was aware. It's his burden to come forward and  
6 demonstrate what he knew.

7 JUDGE CANNATARO: If he knows some - - -

8 JUDGE SINGAS: That he - - - that he was aware of  
9 what?

10 JUDGE CANNATARO: Yeah.

11 JUDGE SINGAS: That he was aware of what,  
12 specifically?

13 JUDGE CANNATARO: What are you aware of?

14 MR. ROKOSKY: To demonstrate when he became aware  
15 of the action, Your Honor. It - - - the evidence that's in  
16 the limited record to date is that Koukis was aware of the  
17 action by at least 2018. And that is consistent - - -

18 CHIEF JUDGE WILSON: Does he have to be aware of  
19 the action or the representation?

20 MR. ROKOSKY: Both - - - both, Your Honor. And -  
21 - - and the reason why we know that is because in the email  
22 exchanges - - -

23 CHIEF JUDGE WILSON: I'm sorry. I was asking a  
24 legal question, not a factual one. That is, if he knew the  
25 action was proceeding but didn't know that he was - - -

1 that the lawyer was purporting to represent him, would that  
2 be enough to bind him?

3 MR. ROKOSKY: That would not be enough to bind  
4 him to representation.

5 CHIEF JUDGE WILSON: So he needs to know that the  
6 lawyer is representing him?

7 MR. ROKOSKY: Correct, Your Honor. And what we  
8 know - - - there's another - - - there's an additional  
9 issue here, which is that a hearing isn't even necessary in  
10 this case, because it is undisputed that Koukis was aware  
11 of the judgment against him and of the representation that  
12 had been done on his behalf. He was aware of that no later  
13 than July of 2019. And he indisputably dragged his heels  
14 and did not move to vacate the judgment against him on the  
15 behalf of unauthorized appearance of counsel for a period  
16 of nearly two years.

17 During that time, Gibson Dunn engaged in judgment  
18 collection efforts against him. We've had the loss of  
19 evidence. It's not clear what evidence exists as to - - -  
20 you know, what Koukis knew, when he knew it, what the - - -  
21 what the circumstances of his relationship were. And as  
22 this court is aware, Mr. Koukis has unfortunately passed  
23 away. So because of his own willful delay for a period of  
24 two years, we now have a loss of evidence that certainly  
25 prejudices Gibson Dunn at this point, just trying to - - -

1 you know, make good on its rights to this judgment and  
2 engage in - - - you know, judgment collection efforts in  
3 the ordinary course.

4 So the court doesn't even need to get into  
5 whether or not a hearing is required because the court  
6 should hold that Koukis is equitably estopped as a matter  
7 of law on the basis of his undisputed, willful delay in  
8 making his motion. But at the very least, the Appellate  
9 Division erred in holding that he had satisfied his burden  
10 of demonstrating, as a matter of law, that there was an  
11 unauthorized appearance of counsel here.

12 Beyond that, Your Honor, the only thing I wanted  
13 to, you know, to - - - to get to this court to - - - to  
14 reemphasize, is just that there has been a lack of  
15 discovery, a lack of fact-finding, a lack of anything. And  
16 all we're asking for is for the court to let - - - you  
17 know, to - - - to make sure that we can proceed in the  
18 ordinary course and pursue our rights.

19 With that, unless there are any further  
20 questions, Your Honor, I'll reserve the rest of my time for  
21 rebuttal. Thank you.

22 CHIEF JUDGE WILSON: Thank you.

23 And I neglected to mention that we are being  
24 joined by our colleague from the Third Department, the  
25 Honorable Lisa Fischer. Thank you.



1 MR. ARONAUER: And may it please the court.  
2 Joseph Aronauer, attorney for the estate of George Koukis.  
3 To my right is cocounsel Henry Korn.

4 I would like to start off with dealing with the  
5 estoppel argument. As we put in our brief, for estoppel to  
6 apply, Gibson Dunn would have had to change its position,  
7 and it would - - - had to have been prejudiced. The motion  
8 court made a factual finding that Gibson Dunn was not  
9 prejudiced, and that was not changed by the Appellate  
10 Division. So it has been established for purposes of this  
11 appeal, that Gibson Dunn did not have prejudice. And they  
12 did not change their position because their position has  
13 always been that they're going to go forward and forward  
14 and forward and forward.

15 I think when you look at this case, if you look  
16 at it in terms of a hurdle race - - -

17 JUDGE RIVERA: Well, what - - - other than an  
18 affidavit saying I didn't - - - I didn't approve that  
19 representation, I never authorized him to represent me,  
20 what else was put in?

21 MR. ARONAUER: What else could he have done?

22 JUDGE RIVERA: No, no. What else was actually  
23 submitted to support the claim that this was an  
24 unauthorized representation?

25 MR. ARONAUER: Your Honor, I'm very glad you

1 asked that question.

2 JUDGE RIVERA: Me, too.

3 MR. ARONAUER: What was submitted was details on  
4 the denial, you never billed me. I never communicated with  
5 you. The only communication I had with you - - -

6 JUDGE TROUTMAN: Besides his own words?

7 MR. ARONAUER: What's that?

8 JUDGE TROUTMAN: Just his own words, that's what  
9 you're outlining now?

10 MR. ARONAUER: Well, yes. And he annexed as an  
11 exhibit, an email. The only communication he had where he  
12 told Santamarina not to represent him. But there's more -  
13 - -

14 JUDGE TROUTMAN: So if the other side had  
15 something that suggests the opposite, should there not have  
16 been a hearing or discovery?

17 MR. ARONAUER: Well, Your Honor, when all these  
18 things were filed - - - and I just want to flesh out the  
19 response to Judge Rivera's question. In addition to that,  
20 we annexed the sworn statement of Santamaria, where he  
21 admitted that he did not have the contact information for  
22 Koukis.

23 And so I think it's the burden of proof, after  
24 you make a denial and you back it up, and also before the  
25 motion court - - -

1 JUDGE TROUTMAN: So that, as a matter of law,  
2 establishes that he had no authority to act?

3 MR. ARONAUER: I think the answer is because  
4 there were electronic filings in this case, and Santamarina  
5 was an attorney of record, and he got those filings, and he  
6 never responded. He never denied it. What are we having a  
7 hearing about? And the Appellate Division properly held -  
8 - -

9 JUDGE TROUTMAN: With respect to agency, you  
10 don't think - - -

11 MR. ARONAUER: Well, let's - - - agency? There's  
12 clearly not actual agency.

13 JUSTICE FISHER: What about implied?

14 MR. ARONAUER: Why?

15 JUSTICE FISHER: What about implied?

16 MR. ARONAUER: Okay. Apparent authority has to  
17 work with a principal. In this case Koukis, by words or  
18 conduct, tells Santamarina that Joseph D'Anna is my agent.  
19 But because there was no communication from Koukis to  
20 Santamarina, you never get to apparent authority. There is  
21 no apparent authority.

22 JUSTICE FISHER: But isn't that what we don't  
23 know, that they're looking to develop in the record? We  
24 don't have that information.

25 MR. ARONAUER: Well, Your Honor, we do have the

1 record because we submitted statements, Santamarina got it.  
2 The only people who know what happened between Santamarina  
3 and Koukis are obviously Koukis and Santamarina. Fair  
4 enough.

5 So Koukis submits details. I never got a bill.  
6 I never had communication other than telling him not to  
7 represent me.

8 JUSTICE FISHER: That was after the fact, though?  
9 Because it seems like - - -

10 MR. ARONAUER: Yes.

11 JUSTICE FISHER: - - - this whole thing stems  
12 from the litigation in California with Google, and your  
13 client was aware of that, right?

14 MR. ARONAUER: That I - - -

15 JUSTICE FISHER: And he was - - -

16 MR. ARONAUER: That I don't know, and it's not  
17 relevant.

18 JUSTICE FISHER: Well, it is relevant because a  
19 judgment is entered based out of California, and that  
20 judgment is then perfected or taken up here in New York.

21 MR. ARONAUER: The - - - I think the key point  
22 is, Santamarina got notice of the allegations as to the  
23 relationship between him and Koukis. He did not respond.  
24 He was an attorney of record.

25 JUDGE RIVERA: What - - - when did he get that

1 notice?

2 MR. ARONAUER: He - - - instantaneously. That's  
3 the way electronic filings work. When Koukis made his  
4 motion, it was an electronic filing. Every attorney of  
5 record gets notice instantaneously - - - or I would say  
6 electronically. And Santamarina was an attorney of record.  
7 He got notice of this. He knew everything. Santamarina is  
8 also the person - - -

9 JUDGE RIVERA: I'm sorry. And then you're saying  
10 he continued to represent Koukis? I'm - - - I'm - - -

11 MR. ARONAUER: Well, he - - -

12 JUDGE RIVERA: I'm confused. I'm having  
13 difficulty following along.

14 MR. ARONAUER: He purported to continue to  
15 represent him. And one of the things in this case is, if  
16 you use a track analogy of a hurdle race, there are two  
17 hurdles here. Hurdle one is, there must be an  
18 establishment that Santamarina was authorized to appear.  
19 If you get over that hurdle, the second hurdle: was  
20 Santamarina authorized to waive a dispositive defense? The  
21 lack of personal jurisdiction.

22 CHIEF JUDGE WILSON: But why does he specifically  
23 have to be authorized to do that if you've gotten over the  
24 first hurdle?

25 MR. ARONAUER: Because, Your Honor, the decision

1 from Judge Kaye in Hallock said an attorney's authority to  
2 conduct litigation is hardly unbounded. And what we cited  
3 in our brief is two Appellate Division decisions, one from  
4 your department, Gordon v. Espasus (sic), where the court  
5 said that when it's a substantial right, the attorney has  
6 to get authority from the client. And in that case, the  
7 Gordon case, it was a question of giving up rent. And they  
8 said the attorney did not have authority to give up that -  
9 - - that substantial right.

10 In the Bryan case, which we also cited, it was  
11 also held, the attorney did not have a right to give up a  
12 substantial right. In this case - - - in that case, the  
13 right to have a cap on an insurance company's fees.

14 So there is nothing in the record to indicate  
15 that any of the defendants knew that Santamarina was giving  
16 up a dispositive defense. And again, when you look at the  
17 stipulation waiving the personal jurisdiction, it  
18 distinguishes between service of process, which routinely  
19 is given up, and personal jurisdiction. Koukis was a  
20 European domicile. He lived in Switzerland. There is no  
21 lawyer in this courtroom who would give up that right.  
22 Certainly, no one in this courtroom - - - no lawyer in this  
23 courtroom would give up that right without speaking to  
24 their client. And if you read Koukis' affidavit, he  
25 distinguishes - - -

1 JUDGE RIVERA: Well, why can you decide that  
2 without the hearing? He's saying all they want is a  
3 hearing.

4 MR. ARONAUER: Well - - -

5 JUDGE RIVERA: Maybe you can establish that.  
6 Maybe you're right.

7 MR. ARONAUER: Well, we are obviously at a  
8 tremendous disadvantage because of Mr. Koukis' death. But  
9 I think it - - -

10 JUDGE RIVERA: Well, it works both ways. I  
11 understand.

12 MR. ARONAUER: I think in order - - - in order to  
13 have a hearing - - -

14 JUDGE RIVERA: Yeah.

15 MR. ARONAUER: - - - you have to show you got  
16 something. You have to show there's something here to  
17 require a hearing. And both the motion court and the  
18 majority of the Appellate Division factually found there  
19 was no basis to say that Santamarina was authorized to  
20 either appear or to waive the dispositive defense of  
21 personal jurisdiction. That is not merely a substantial  
22 right, but a dispositive right. Because even in the  
23 dissent - - -

24 JUDGE RIVERA: So then what should Santamarina  
25 have done? Are you saying he should have then communicated

1 individually with everyone he was representing regarding  
2 that waiver?

3 MR. ARONAUER: Exactly. Because every individual  
4 defendant - - -

5 JUDGE RIVERA: And what else - - -

6 MR. ARONAUER: - - - had rights.

7 JUDGE RIVERA: What else - - - what else in the  
8 representation did he then need to also get yet another  
9 indication that he could make whatever choice he wanted to  
10 as a litigation strategy?

11 MR. ARONAUER: Well, I - - - I think the way the  
12 - - - Judge Kaye said that the rights of an attorney to  
13 conduct litigation is hardly unbounded. And what the  
14 Appellate Division decisions have said have drawn the  
15 distinction when it's a substantial right. What we have in  
16 this case is more than a substantial right. It's a right  
17 that is dispositive.

18 CHIEF JUDGE WILSON: Well, that assumes - - -

19 MR. ARONAUER: Every single - - -

20 CHIEF JUDGE WILSON: - - - that assumes - - -

21 MR. ARONAUER: - - - every - - -

22 CHIEF JUDGE WILSON: Excuse me a second.

23 MR. ARONAUER: What's that?

24 CHIEF JUDGE WILSON: That assumes that there  
25 isn't personal jurisdiction over him in some other way.

1 MR. ARONAUER: Well, Your Honor - - -

2 CHIEF JUDGE WILSON: I understand he's in  
3 Switzerland.

4 MR. ARONAUER: - - - even the dissent in the  
5 Appellate Division, when you read footnote 1 - - -

6 CHIEF JUDGE WILSON: Yeah.

7 MR. ARONAUER: - - - it concedes that but for the  
8 waiver.

9 CHIEF JUDGE WILSON: And does that bind us?

10 MR. ARONAUER: Nothing in the Appellate Division  
11 binds you, Your Honor. I acknowledge that. Other than the  
12 scope of a review, that if - - -

13 CHIEF JUDGE WILSON: Right, and - - -

14 MR. ARONAUER: - - - that if the motion - - -

15 CHIEF JUDGE WILSON: The plaintiff here does have  
16 another argument about why you can essentially disregard  
17 corporate formalities and find personal jurisdiction over  
18 Mr. Koukis.

19 MR. ARONAUER: Oh, you're talking about the  
20 fraudulent conveyance claim. And the fraudulent conveyance  
21 claim fails to impose personal jurisdiction on Koukis.  
22 One, for the reason asserted by the Appellate Division, it  
23 doesn't state a cause of action. And the other reason,  
24 which I - - - was really my primary argument at the  
25 Appellate Division level, was, that claim has no connection

1 to Koukis' four visits to his daughter in New York City.  
2 That is the totality of his connection to the State of New  
3 York.

4 And so we are talking about the world of specific  
5 jurisdiction. And it is due process, both federally and in  
6 state, that there has to be a connection between the  
7 complaint of acts and the defendant's actions in the State  
8 of New York.

9 JUSTICE FISHER: I don't recall. But can you  
10 clarify, was there any connection in terms of the  
11 transactions? I know he initially invested a million  
12 through Zeus, and then there was a subsequent loan and  
13 another subsequent bailout, like about 1.9 million, I  
14 think. Was that conducted through the State of New York,  
15 or was that done out in California?

16 MR. ARONAUER: I - - - the motion court - - - and  
17 we have a list of all the factual findings that were not  
18 disturbed by the Appellate Division - - - says he did - - -  
19 he did not meet in New York. The meetings were in London.  
20 They were in Hong Kong. So if I remember my pages of the  
21 brief correctly, we list the jurisdictional findings on  
22 pages 16 to 18. And the motion court wrote a twenty-four-  
23 page decision. It was a very careful, well thought out  
24 decision. It made numerous factual findings. None of  
25 which were changed by the Appellate Division. And as I

1 understand the rules of this court, if there are factual  
2 findings made by the motion court and they're not changed  
3 by the Appellate Division, they are binding.

4 Gibson doesn't - - - Gibson Dunn does not get a  
5 second round at Appellate factual findings. This court - -  
6 -

7 JUDGE RIVERA: Can I get back to the point of his  
8 request for a hearing, which is what I understood him to  
9 say, and your statement that you're at a disadvantage. Of  
10 course, that's because Mr. Koukis is deceased. I assume  
11 this is what you were referring to.

12 MR. ARONAUER: Right.

13 JUDGE RIVERA: Does this mean that you are unable  
14 to take a position in the hearing? That you are going to  
15 be unable, if a hearing was granted, to proceed?

16 MR. ARONAUER: Having tried quite a few cases,  
17 Your Honor, it's always good to have a client there.

18 JUDGE RIVERA: Yes.

19 MR. ARONAUER: Okay. And I - - - I think we - -  
20 - we could do what we have to do without Mr. Koukis, but  
21 it's always helpful to have a client. And one of the  
22 things - - -

23 JUDGE RIVERA: Well, you have a client, but I get  
24 your point. You mean Mr. Koukis?

25 MR. ARONAUER: Well, it's - - - it's an - - -

1           it's estate now.

2                         JUDGE RIVERA:   Yes.   Yes.

3                         MR. ARONAUER:   And so one of the things is that  
4           on a motion to vacate a default judgment like we have  
5           before this court, the burden of proof to establish  
6           personal jurisdiction is on the plaintiff.  And Koukis'  
7           papers truly establish, with sworn statements from  
8           Santamaria in the - - - in response to the information  
9           subpoena, there was nothing there.  There was no basis.  
10          The only possible basis, and we deal with this in our  
11          brief, is to say there was ratification of Santamarina's  
12          both appearance and waiver of the personal jurisdiction, or  
13          there was estoppel.

14                         Estoppel we've discussed, Gibson Dunn didn't  
15          change its position and as a binding factual finding, they  
16          were not prejudiced.  As I understand ratification, they  
17          have to show that Koukis adopted Santamarina's appearance  
18          and his waiver of personal jurisdiction.  It is  
19          counterintuitive for any European domicile to adopt a  
20          waiver of personal jurisdiction in a case in the State of  
21          New York.  It doesn't make sense.  And that is why the  
22          majority of the Appellate Division, consistent with the  
23          motion court, found that there was no basis to say that  
24          Santamarina was both authorized to appear and to waive the  
25          personal jurisdiction defense.

1                   And unless the panel has any questions, I will  
2                   let my adversary have his rebuttal time.

3                   CHIEF JUDGE WILSON: Thank you.

4                   JUDGE TROUTMAN: Counsel, could you pick up where  
5                   he just left off with respect to why would you waive? Why  
6                   would his client waive that jurisdiction being a European  
7                   domicile?

8                   MR. ROKOSKY: Your Honor, I'm not counsel for Mr.  
9                   Koukis, and I can't speak to the strategic considerations  
10                  that they may or may not have made. What I know is the  
11                  limited record that we have on the motion here, which is  
12                  that he did. It wasn't just a stipulation that he  
13                  expressly waived it. He also filed an answer and litigated  
14                  on the merits for two years. Those are strategic decisions  
15                  that are made all the time as a matter of litigation.

16                  JUDGE TROUTMAN: But doesn't that also go back to  
17                  your argument that a hearing is required with respect to  
18                  what did or did not happen, discovery, in - - - as opposed  
19                  to what the court did below with - - - just vacating?

20                  MR. ROKOSKY: That's right. I mean, that - - -  
21                  that's exactly right. Now, I would like to start with the  
22                  first point I was going to make, which is that, you know,  
23                  that would contemplate a - - - you know, further  
24                  proceedings in this action. But the courts don't need to  
25                  get there. And the reason why is because Koukis is



1 estopped from making these arguments, because Gibson Dunn  
2 has been prejudiced as a matter of law. As this court  
3 noted in the Hallock case, halting the machinery of  
4 litigation is itself prejudicial. As a matter of - - - it  
5 does not matter whether or not there is a loss of evidence.  
6 It doesn't matter - - - which there is here. It doesn't  
7 matter whether or not Gibson Dunn engaged in years of  
8 litigation to, you know, collect on a judgment and - - -  
9 and went through the expense and the time of that, which it  
10 did. But that is prejudicial per se.

11 And now we have the untimely passing of Mr.  
12 Koukis himself, which has altered the complexion of any  
13 factual hearing that would happen. And that was due to the  
14 undisputed dragging of his heels for two years before he  
15 moved to vacate. He could have done this within days or  
16 weeks of getting the judgment and learning about the  
17 authorized appearance. Even if you credit all of his  
18 claims that he was unaware of the litigation throughout the  
19 entire course of the litigation, he sat there from - - -  
20 from July 2019 all the way through the rest of 2019, he's  
21 emailing with Santamarina. He then sits on it for all of  
22 2020 and then into the spring of 2021. It was only after  
23 Gibson Dunn moved and got an order turning over his  
24 property, and had moved for civil contempt because he was  
25 not complying with that, that he then moved and - - - to

1 vacate the judgment on the basis of unauthorized appearance  
2 of counsel, based solely on a few sentences that he lobbed  
3 in - - - in an affidavit.

4 He doesn't explain anything about what he knew,  
5 when he knew it, why is it that - - - that his codefendant  
6 and his counsel litigated on his behalf for years? There's  
7 absolutely no factual detail about that whatsoever. And  
8 now the record has changed, unfortunately - - -

9 JUDGE SINGAS: But I don't know why it's really  
10 fair for Gibson Dunn to believe, post mid-2019, that  
11 Santamarina had the authority to act as Koukis' lawyer,  
12 right? We knew that he, Santamarina, moved to withdraw.  
13 He said Joseph D'Anna was the only defendant he'd been in  
14 contact with. He had no contact information for Koukis at  
15 all. Supreme Court noted in the engagement letter that he  
16 - - - it was unclear who he was representing. So at least  
17 from that point on, Gibson Dunn should have been alerted or  
18 couldn't have relied on anything that Koukis was doing to  
19 demonstrate that Santamarina represented him.

20 MR. ROKOSKY: Your Honor, we - - - we have a  
21 judge - - - even after Supreme Court issued that decision  
22 denying Santamarina's attempt to vacate his representation  
23 of all of the defendants, the court then went on to enter a  
24 default judgment. All Gibson Dunn had at that time was a -  
25 - - a judgment that was entered in the ordinary course, and

1 Gibson Dunn went to collect on that judgment. That's all  
 2 it did. There was no further evidence that Santamarino  
 3 lacked any authority to represent Koukis for the entire  
 4 time that Koukis was evading that judgment. All of the  
 5 email correspondence that is in the record, Gibson Dunn was  
 6 not - - - was not aware of that - - - that correspondence  
 7 for much of the time that Koukis was preparing his motion  
 8 to vacate. And all of this could have been avoided if  
 9 Koukis had simply moved promptly and - - - to vindicate the  
 10 rights that he claimed that he had.

11 And - - - and with that, Your Honor, I - - - I  
 12 just wanted to say one other thing, which is that the  
 13 importance of this appeal - - - think about what this means  
 14 for litigation here. What we had here was we had an  
 15 officer of the court who appeared on behalf of a defendant  
 16 for a period of years and litigated - - - litigated for all  
 17 of the defendants consistent with all of the evidence that  
 18 we have here in the record. And Gibson Dunn was told both  
 19 personally by that counsel and in public filings for a  
 20 period of years that he had authority to represent Mr.  
 21 Koukis.

22 Now, even after Mr. Koukis has passed away, we -  
 23 - - we have received - - - you know, we've received word  
 24 that even my friend sitting here has authority to represent  
 25 his estate. And we have taken - - - we have - - - you

1 know, we've accepted that representation, just as a court  
2 would during the litigation in this case, accepted the  
3 representation by Santamarina that he had authority to  
4 represent Mr. Koukis. Because absent any evidence to the  
5 contrary, litigation in the ordinary course in New York has  
6 to ascribe at least some weight to the statements by  
7 counsel that they have authority to act on behalf of their  
8 clients. That there's a presumption of regularity that  
9 goes there. And what the Appellate Division decision did  
10 in this case was it ascribed literally a zero weight to the  
11 public filings and sworn statements of Mr. Santamarina for  
12 a period of two years. And that's an error as a matter of  
13 law. This court has jurisdiction to review it, and it  
14 should review it, and it should reverse.

15 CHIEF JUDGE WILSON: Thank you.

16 MR. ROKOSKY: Thank you.

17 (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Gibson, Dunn & Crutcher v. Koukis, No. 23 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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