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| Wachtel Missry LLP v Largotta |
| 2026 NY Slip Op 30969(U) |
| March 11, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 652190/2024 |
| Judge: Lyle E. Frank |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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WACHTEL MISSRY LLP

Plaintiff,

- v -

SEAN LARGOTTA,

Defendant.

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INDEX NO. 652190/2024

MOTION DATE 02/10/2026

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 29, 30, 31, 32, 33, 34, 35, 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, 61, 68, 62, 63, 64, 65, 66, 67, 69, 70, 71

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, the motion is granted in part.

Background

This motion arises out of a dispute over legal fees. Plaintiff is a law firm that entered into a retainer agreement with Defendant in October of 2019, agreeing to represent him in two actions that had been commenced against him. Plaintiff alleges that as of August of 2023, there were unpaid legal fees due in the amount of \$42,841.03. In March of 2024, Plaintiff sent a set of required documents to Defendant pursuant to the New York State Fee Dispute Resolution Program in 22 NYCRR § 137. Defendant did not file a request to arbitrate, and Plaintiff filed this underlying proceeding seeking to recover the unpaid fees.

In July of 2024, Plaintiff served the summons and complaint on an unnamed waiter at the Gansevoort Rooftop restaurant, considering that the actual place of business for defendant. The summons and complaint were also mailed to Defendant c/o the Gansevoort Rooftop, and at the address of 2 Wooster Street #4B as Defendant’s last known home address. Defendant did not

answer or appear, and Plaintiff was granted a default judgment in January of 2025. In December, Defendant moved to vacate the default, arguing in part that he had not received notice of this suit until notice of the money judgment was delivered to his office in Garden City.

In an Order from this Court dated February 2, 2026 (the “February Order”), the motion to vacate was denied. The Court’s decision was based in part on a news clip whereby Defendant is identified as a partner of the Gansevoort Hotel, and that there was nothing but “conclusory denials” offered to show that the rooftop restaurant was not Defendant’s actual place of business and that he did not reside at 2 Wooster Street at the time of service.

Discussion

In this motion, Defendant moves to reargue the February Order. CPLR § 2221(d)(2) states that a motion to reargue must be based “upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion.” Plaintiff opposes the motion. Defendant argues that the Court overlooked certain key matters of fact in denying the motion to vacate. Specifically, Defendant points to his sworn affirmation stating that his actual place of business is in Garden City, a liquor license for the rooftop restaurant that did not include Defendant in the list of principals, and a lease for an apartment at 111 Worth Street in Defendant’s name. The Court finds that in the February Order, Defendant had indeed offered more than conclusory denials for the proposition that the rooftop restaurant connected to the Gansevoort Hotel was not his actual place of business and that the 2 Wooster Street address was not his home address. As these are relevant facts going to the standard for vacating a default, the Court deems it proper to grant the motion for reargument.

Defendant Has Shown a Reasonable Excuse and Meritorious Defense as to Damages but Has Failed to Demonstrate a Reasonable Excuse as to Liability

The issue now becomes whether Defendant has met his burden to vacate the default judgment entered against him. Because judgment had already been entered against him, Defendant must “demonstrate a reasonable excuse for its delay in appearing and answering the complaint and a meritorious defense to the action.” *Eugene Di Lorenzo, Inc. v. A.C. Dutton Lumber Co.*, 67 N.Y.2d 138, 141 [1986]. For the reasons given above, the Court finds that Defendant has established a reasonable excuse for the failure to appear. It appears clear that he did not personally reside at the Wooster Street address. And that he is a member in an entity that owns the Gansevoort Hotel does not mean that the rooftop restaurant was his actual place of business, especially given the evidence that he worked out of the Garden City office. The issue therefore becomes whether Defendant has established a meritorious defense, which the Court did not reach in the February Order.

Defendant makes the following arguments as to why he has a meritorious defense: 1) that he was not served with the notice of client’s right to arbitrate within two years of the last legal work Plaintiff performed for him; 2) the amount of fees charged by Plaintiff are inflated and inaccurate. Regarding the first reason, Plaintiff has submitted a ledger, affidavits, and other evidence showing that he performed legal work through 2025, including an in-person appearance at a court conference on April 4, 2025, and again at a court conference in September of 2025. The general rule is that a plaintiff who waits more than two years after legal services have been rendered to serve a client with the notice of right to arbitrate cannot sustain an action for legal fees. *See, e.g., Filemyr v. Hall*, 186 A.D.3d 117, 119 – 20 [1st Dept. 2020]. While Defendant argues that the legal services in 2025 were not authorized, he cites no authority for the proposition that only legal services that have been shown to be authorized start the two-year clock for the notice of right to arbitrate. Therefore, as Plaintiff is still within the two-year

window based on the 2025 legal services rendered, Defendant cannot establish a meritorious defense on this ground.

Defendant also argues, as stated above, that the legal fees rendered are inaccurate and inflated. He submits an email from Plaintiff stating that the “bill came in a lot higher than expected.” While this goes to the issue of a meritorious defense on the amount of damages, this does not establish a meritorious defense as to liability for some amount of unpaid legal fees. In such a situation, it is appropriate to vacate only the portion of the default that awarded a fixed sum and hold an inquest on damages, where Defendant will be able to appear and contest the amount that Plaintiff seeks. Accordingly, it is hereby

ADJUDGED that the motion is granted in part; and it is further

ORDERED that the order of this court dated February 2, 2026, is hereby vacated; and it is further

ORDERED that any New York City Marshal’s Notices of Levy and Sale, Executions with Notice to Garnishee, or holds on Defendant Sean Largotta’s bank accounts related to the February 2, 2026 order are likewise vacated; and it is further

ORDERED that Plaintiff Wachtel Missry LLP is entitled to judgment as to liability against Defendant Sean Largotta; and it is further

ORDERED that an assessment of damages against Defendant Sean Largotta is directed; and it is further

ORDERED that a copy of this order with notice of entry be served by the Plaintiff Wachtel Missry LLP upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper

fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

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3/11/2026
DATE

LYLE E. FRANK, J.S.C.

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| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> DENIED | <input checked="" 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"/> | FIDUCIARY APPOINTMENT |
| | | | <input type="checkbox"/> | REFERENCE |