

**New York City Police Pension Fund v Pazienna**

2025 NY Slip Op 32341(U)

July 2, 2025

Supreme Court, New York County

Docket Number: Index No. 150490/2019

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA A. JAMES**

**PART 59**

*Justice*

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NEW YORK CITY POLICE PENSION FUND,

Plaintiff,

- v -

MARC V. PAZIENZA,

Defendant.

-----X

**INDEX NO.** 150490/2019

**MOTION DATE** 01/04/2024<sup>1</sup>

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27

were read on this motion to/for DISMISSAL.

ORDER

Upon the foregoing documents, it is

ORDERED that the cross-motion of the plaintiff New York City Police Pension Fund for leave to amend the complaint, or, in the alternative, for jurisdictional discovery, is denied; and it is further

ORDERED that the motion to dismiss the complaint for lack of personal jurisdiction, pursuant to CPLR 3211(a)(8), of defendant Marc V. Pazienza is granted, and the complaint is dismissed in its entirety as against such defendant, with costs and disbursements to such defendant as taxed by the Clerk of the Court, and the Clerk

<sup>1</sup> Date transcript of oral argument secured by the parties, and provided to the court.

is directed to enter judgment accordingly in favor of such defendant.

DECISION

Plaintiff New York City Police Pension Fund (the "plaintiff") commenced this action seeking the return of an alleged \$30,785.70 pension overpayment that has been retained by pro se defendant Marc V. Pazienza ("Pazienza").

Pazienza moves to dismiss the complaint on the basis that this court lacks personal jurisdiction over him, pursuant to CPLR 3211(a)(8). Pazienza contends that he is a resident of Florida and has no connection to New York that would confer personal jurisdiction over him. NYCPPF cross-moves to amend its complaint or in the alternative, for jurisdictional discovery.

Plaintiff does not contend that this court has personal jurisdiction over Pazienza, a non-domiciliary, pursuant CPLR §§ 302(a)(1), (2), or (4), but asserts that this court has jurisdiction over Pazienza pursuant to CPLR § 302(a)(3)(ii). In order for plaintiff to establish personal jurisdiction over Pazienza under CPLR § 302(a)(3)(ii), plaintiff "must show that (1) the defendant committed a tortious act outside New York; (2) the cause of action arose from that act; (3) the tortious act caused an injury to a person or property in New York; (4) the defendant expected or should reasonably have expected the act to have consequences in New York; and (5) the defendant derived substantial

revenue from interstate or international commerce.” Deutsche Bank AG v Vik, 163 AD3d 414, 415 (1st Dept 2018)

Under New York law, “the situs of commercial injury is where the original critical events associated with the action or dispute took place, not where any financial loss or damages occurred,” id. Thus, here, any alleged injury occurred in Florida, and not in New York notwithstanding the fact that plaintiff deposited the funds in New York. See USA Sevens LLC v World Rugby Ltd., 191 AD3d 620 (1st Dept 2021) (“the fact that plaintiffs may have suffered economic loss in New York is an insufficient basis upon which to base personal jurisdiction”).

As a result, NYCPFF fails to demonstrate that this court has personal jurisdiction over Pazienza.

Plaintiff further argues that jurisdictional discovery is warranted to determine if Pazienza derives substantial revenue from interstate commerce, as Pazienza admitted that he practices law in multiple state jurisdictions, including New York. Such argument fails to establish that additional discovery would lead to an exercise of jurisdiction, since even if Pazienza derives substantial revenue from interstate commerce, there is no basis for the exercise of personal jurisdiction, where the situs of the injury is outside of New York. See SNS Bank, N.V. v Citibank, N.A., 7 AD3d 352, 354 (1st Dept 2004). Finally, the proposed amendments to the complaint are not sufficient to establish a basis

for jurisdiction over Pazienza, for the foregoing reasons. Therefore, leave to amend the complaint must be denied. See Fouad v Milton Hershey Sch & Sch Trust, 231 AD3d 669 (1<sup>st</sup> Dept 2024).

*Debra A. James*

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7/2/2025

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE