

**Weinstein v Levitin**

2026 NY Slip Op 30061(U)

January 8, 2026

Supreme Court, Kings County

Docket Number: Index No. 525670/2018

Judge: Reginald A. Boddie

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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 8th day of January 2026.

**P R E S E N T:**

Honorable Reginald A. Boddie  
Justice, Supreme Court

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HENRY WEINSTEIN and HPHW REALTY CORP., INC.,

Index No. 525670/2018

Plaintiffs,

Cal. No. 22-25 MS 5-8

-against-

JEFFREY LEVITIN, LEVITIN & ASSOCIATES, P.C.,  
BORDEAUX CAPITAL, LLC, YECHIEL SHIMON SPREI  
a/k/a SAM SPREI, OLDEN EQUITIES CORP., and  
ROCHELLE FRIEDMAN,

**Decision and Order**

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 5

87-92

MS 6

94-100

MS 7

103-119; 130-132

MS 8

120-126

Motion sequences five through eight are decided as follows:

On December 20, 2018, plaintiffs commenced this action by the filing of a summons with notice alleging that defendants perpetrated a \$5,000,000 fraud upon plaintiffs in connection with certain real estate deals. On August 29, 2019, defendants were purportedly served with process as indicated by the affidavits of service. By decision dated January 4, 2021, a default judgment

was granted in favor of plaintiffs against defendants. Yechiel Shimon Sprei a/k/a Sam Sprei ("Sprei"), Olden Equities Corp., and Rochelle Friedman ("Rochelle" and collectively, "Defaulting Defendants"). A judgment was entered against the Defaulting Defendants on November 26, 2024 ("Judgment").

On August 11, 2025, plaintiffs filed the instant motion (MS 5) for contempt against Rochelle, who is Sprei's wife, for her failure to appear for a deposition at plaintiffs' counsel's office on December 19, 2024, pursuant to a Notice to Take Deposition Upon Oral Examination for Supplementary Proceedings that was personally served upon her on November 21, 2024. On September 30, 2025, the Defaulting Defendants filed the instant order to show cause (MS 6) seeking to vacate the Judgment entered against them, stay the contempt proceeding against Rochelle, and to dismiss the action based on plaintiffs' alleged failure to obtain personal jurisdiction over the Defaulting Defendants and effectuate timely service of process under CPLR 306-b. In this regard, the Defaulting Defendants submit that plaintiffs served them at a post office box on 15th Avenue in Brooklyn, which is not their dwelling place, usual place of abode, or actual place of business within the meaning of the CPLR. Further, the Defaulting Defendants maintain that they have not used that P.O. box for many years prior to plaintiffs' attempted service. Moreover, the Defaulting Defendants contend that Sprei is not the controlling shareholder, or even affiliated with Olden Equities, as there is no entity that has filed with the New York State Department of Corporations known as Olden Equities Corp. Rather, that Sprei is affiliated with Olden Group, LLC which lists its address with the New York Secretary of State as 4203 13th Avenue, Suite 102, in Brooklyn, New York.

In addition to the foregoing, the Defaulting Defendants argue that the action should be dismissed because plaintiffs failed to comply with CPLR 306-b since they commenced this action

on December 20, 2018, but did not attempt to serve the Defaulting Defendants until 253 days later, on August 29, 2019.

By cross-motion filed on November 13, 2025 (MS 7), plaintiffs oppose the Defaulting Defendants' order to show cause and seek an order extending their time to serve under CPLR 306-b. According to plaintiffs, the location where Defaulting Defendants were served is much more than a post office box and, to the extent Sprei contends to the contrary in his affidavit, plaintiffs argue that Sprei fails to provide any details regarding: (1) the ownership of the post office box; (2) what else is located at the address besides a post office box; (3) what arrangements Sprei had at the location regarding receiving mail there; and (4) why he would not receive mail at that location. Plaintiffs further point out that Sprei, in his affidavit, provides no documentary evidence to support any of his assertions, such as the location of his actual dwelling place, usual place of abode or business at the time service took place, or that he ever had a post office box at the 4403 15<sup>th</sup> Avenue address and received mail there.

In addition, plaintiffs contend that the Judgment should not be vacated because the Defaulting Defendants fail to address any of the allegations made in plaintiffs' complaint or mention any meritorious defense they may possess. Moreover, plaintiffs submit it would be prejudicial to plaintiffs to have to begin litigation seven years after the incident and Defaulting Defendants' conclusory denials regarding the instant litigation are not worthy of belief.

Regarding their request for an extension of time to serve process, plaintiffs contend that the circumstances are such that an extension should be granted on either a good cause or interest of justice standard. In particular, plaintiffs claim that (1) a diligent attempt was made to serve the Defaulting Defendants once it was determined that the case could not be settled; (2) they have a meritorious action; (3) Defaulting Defendants have offered no defense to plaintiffs' claims, and

(4) it is likely that the Defaulting Defendants will argue that this action, were it to recommence, would be time-barred.

By separate cross-motion filed on November 21, 2025 (MS 8), plaintiffs move for an order extending their time to file a note of issue and place this matter on the trial calendar. According to plaintiffs, a motion to extend the time to file their note of issue was filed sometime after July 11, 2022, which resulted in an order on consent being entered into on September 7, 2022, between plaintiffs and the Levitin defendants. However, plaintiffs represent that such order was not signed by the court until November 28, 2023. Pursuant to such order, plaintiffs further represent that the court was to schedule a compliance conference but that no conference was ever scheduled, and the matter was marked disposed. As a result, plaintiffs submit restoration is necessary and warranted as plaintiffs never intended to abandon this action, as evidenced by previous motion practice and the entry of a judgment against the Defaulting Defendants.

In opposition to plaintiffs' motion to extend the time for service, Defaulting Defendants assert that, even assuming that the service address was proper, they were never served until August 29, 2019. While plaintiffs point to settlement discussions as the basis for the delay, Defaulting Defendants point out that the emails proffered in support ended in February 2019, approximately 191 days earlier than the day on which they were purportedly served. Moreover, Defaulting Defendants contend that plaintiffs lack diligence, having waited over six years to seek an extension of time, and defendants would be prejudiced if an extension is granted given the passage of time.

In addition, Defaulting Defendants argue that personal jurisdiction was never obtained because, besides service being effectuated at a post office box, plaintiffs never complied with CPLR 308(2) insofar as they failed to complete the required mailing after service upon a person of suitable age and discretion. Defaulting Defendants also re-emphasize that they have not been

associated with the service address for eight years. In support, they proffer the sworn affirmation of the owner of the store located at 4403 15th Avenue, Elisha Gottdiener (“Gottdiener”), who states that the address is a post office box, that the Defaulting Defendants have not had access to it for over eight years, and that Defaulting Defendants had no arrangement to receive mail sent to the post office box. To the extent plaintiffs argue that Defaulting Defendants had actual knowledge of the instant action, Defaulting Defendants contend that such is irrelevant given that actual notice alone will not sustain the service or subject a person to the court’s jurisdiction when there has not been compliance with the prescribed conditions of service.

In reply, plaintiffs contend that Defaulting Defendants are submitting Gottdiener’s affidavit for the first time in reply and thus have not met their initial burden in establishing that they were not properly served.

#### Discussion

Upon review of the parties’ submissions, Defaulting Defendants established that they were not properly served under CPLR 308(2). Regardless of whether the service address involves a post office box, there is no indication that the service address was the Defaulting Defendants’ “actual place of business, dwelling place or usual place of abode” at the time of service. In addition, plaintiffs do not dispute that they failed to execute the secondary mailing to Defaulting Defendants’ last known residence or actual place of business as required under CPLR 308(2). Thus, Defaulting Defendants were never properly served.

Turning then to plaintiffs’ application for an extension of time, “[p]ursuant to CPLR 306-b, a court may, in the exercise of discretion, grant a motion for an extension of time within which to effect service for good cause shown or in the interest of justice” (*State of New York Mtge. Agency v Braun*, 182 AD3d 63, 66 [2d Dept 2020] [citations omitted]). “To establish good cause, a plaintiff

must demonstrate reasonable diligence in attempting service” (*Bumpus v New York City Tr. Auth.*, 66 AD3d 26, 31-32 [2009]). Here, it is undisputed that plaintiffs never attempted to serve Defaulting Defendants within the 120-day period following the filing of the summons, or even within a reasonable time thereafter. Thus, plaintiffs cannot demonstrate good cause for an extension.

“Unlike an extension request premised on good cause, a plaintiff need not establish reasonably diligent efforts at service as a threshold matter” (*PNC Bank, N.A. v Sarfaty*, 225 AD3d 721, 722 [2d Dept 2024]). “In considering the interest of justice standard, ‘the court may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff’s request for the extension of time, and prejudice to defendant’” (*State of New York Mtge. Agency v Braun*, 182 AD3d at 66-67 [citing *Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 105-106 [2001]]).

Here, an extension of time is warranted in the interest of justice. Plaintiffs timely commenced this action against defendants seeking to recoup, among other things, the millions of dollars invested under supposedly false pretenses. Further, approximately seven years have lapsed since the filing of the summons indicating that the statute of limitations has expired. Moreover, Defaulting Defendants do not meaningfully dispute timely notice of the actual controversy. Finally, there is no demonstrable prejudice to the Defaulting Defendants as a consequence of the delay in service. Thus, an extension of time to serve is warranted under CPLR 306-b.

#### **Conclusion**

Based on the foregoing, plaintiffs’ motion seeking contempt against Rochelle (MS 5) is denied. Defaulting Defendants’ motion seeking, among other things, an order vacating the

Judgment entered against them (MS 6) is granted to the extent that the Judgment dated November 26, 2024, is hereby vacated. Plaintiffs' cross-motion seeking an extension of time to serve Defaulting Defendants pursuant to CPLR 306-b (MS 7) is granted in the interest of justice. Plaintiffs shall serve the summons and complaint upon Defaulting Defendants pursuant to CPLR 308 within 45 days from the date of entry of this decision. Plaintiffs' separate cross-motion seeking restoration of this matter to the active calendar (MS 8) is granted. The matter is hereby restored. The parties shall appear for an in-person status conference on March 31, 2026, at 2:30 PM in courtroom 956.

Any item not explicitly addressed herein was either deemed to be without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie  
Justice, Supreme Court

HON. REGINALD A. BODDIE  
J.S.C.