Podhragy v Stolz
2026 NY Slip Op 30486(U)
February 9, 2026
Supreme Court, New York County
Docket Number: Index No. 159980/2024
Judge: Kathleen Waterman-Marshall
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31**

Justice

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JOHANNES PODHRAGY,

Plaintiff,

- v -

HISKIA WERNER STOLZ, REGULA CHRISTINA STOLZ, "JOHN AND JANE DOE #1" THROUGH "JOHN AND JANE DOE #10"

Defendant.

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INDEX NO. 159980/2024

MOTION DATE 12/08/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, the renewed motion by plaintiff for a default judgment is denied.

Background

This is an action for replevin, unjust enrichment, and conversion related to a Renaissance painting by Tiziano Vecellio / Titianus / Titan entitled “Girl with a Platter of Fruit / Mädchen mit Fruchtschale”. Plaintiff alleges that the painting belonged to his family and was stored with non-parties LGT Treuhand AG and LGT Bank AG in Liechtenstein. Plaintiff further alleges that the painting was secretly removed from storage by the LGT non-parties (without his family’s consent) and sold at auction in Basel, Switzerland in 2006 to defendants Hiskia Werner Stolz and Regula Christina Stolz. In September of 2024, Plaintiff sent a demand letter to defendants to return the painting. Plaintiff alleges that the demand went unheeded, and this action resulted.

Plaintiff previously moved for a default judgment against defendants, and this Court denied his motion on jurisdictional grounds under CPLR § 302(a)(1). Plaintiff now moves again for a default judgment, providing a supplemental affirmation of additional facts which he contends establish long-arm jurisdiction under CPLR § 302(a)(3).

Discussion

As an initial matter, the Court’s Decision and Order denying plaintiff’s first default judgment motion did not expressly provide that it was without prejudice to seek the same relief in a successive motion. Although not denominated as a motion to reargue or renew, the substance of this motion seeks renewal. Thus, the Court considers the motion to be one brought under CPLR § 2221 for leave to renew.

I. Leave to Renewal

A motion to renew shall be based upon new facts not offered on the prior motion that would change the prior determination…" (CPLR § 2221[e][2]). Where a motion for renewal is not based upon new evidence unavailable at the time of the original motion, or the movant fails to offer a reasonable excuse for the failure to submit evidence upon the original motion, renewal is properly denied (*Schumann v City of New York*, 242 AD2d 616 [2d Dept 1997]). A motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation (*Elder v Elder*, 21 AD3d 1005 [2d Dept 2005]).

Plaintiff's supplemental affirmation submitted on this motion does not set forth why the additional jurisdictional facts he now relies on were unavailable at the time of his first default judgment motion, and his motion for leave to renew is denied on that basis (*Segall v Heyer*, 161 AD2d 471 [1st Dept 1990; *Cuccia v City of New York*, 306 AD2d 2, 3 [1st Dept 2003] ["A request for renewal should be rejected when the moving party fails to offer a reasonable excuse for not submitting the new material on the previous motion"]).

II. Jurisdiction – CPLR § 302(a)(3)(ii)

Assuming, *arguendo*, that the Court's Decision and Order denying plaintiff's first default judgment motion permitted plaintiff to seek another default against defendants upon additional proof of defendants' activities, or that plaintiff provided a reasonable excuse for not offering the additional jurisdictional facts on the first default judgment motion, plaintiff's second default judgment motion must nevertheless be denied. There is no evidence that defendants would reasonably expect their alleged actions to have consequences in New York, that their alleged acts caused injury in New York, or that they derive substantial revenue from New York or international commerce.

CPLR § 302(a)(3)(ii) provides for jurisdiction over non-domiciliaries who "expect[] or should reasonably expect the[ir] act to have consequences in the state and derive[] substantial revenue from interstate or international commerce". To establish jurisdiction under CPLR § 302(a)(3)(ii), the plaintiff must demonstrate "(1) that 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" (*Penguin Group [USA] Inc. v. American Buddha*, 16 NY3d 295, 302 [2011]). Where the requirements of CPLR § 302(a)(3)(ii) are met, jurisdiction must separately meet the due process requirements of "minimum contacts" and "traditional notions of fair play and substantial justice" (*id.*; *International Shoe Co. v Washington*, 326 US 310 [1945]).

For the purposes of this motion, the Court assumes that defendants committed a tortious act outside of New York giving rise to the instant action – establishing the first two of the five jurisdictional requirements under CPLR § 302(a)(3)(ii). However, plaintiff has not demonstrated that the alleged tortious acts caused injury in New York. Plaintiff now alleges that he operates an office in New York to handle his mother's estate and art related affairs and that the injury, therefore, occurred in New York. There is no evidence, other than plaintiff's supplemental

affirmation, that he operates a New York office such as a lease, deed, or office related bill. In any event, "the situs of the injury is the location of the original event which caused the injury, not the location where the resultant damages are subsequently felt by the plaintiff" (*Hermann v Sharon Hosp., Inc.*, 135 AD2d 682 [2d Dept 1987] citing *McGowan v Smith*, 52 NY2d 268 [1981]; *CRT Investments, LTD. v BDO Seidman, LLP*, 85 AD3d 470 [1st Dept 2011]). Plaintiff has not alleged that the original event causing injury – be it the alleged wrongful sale in Switzerland or violation of an agreement between plaintiff's predecessors and the non-party storage facility in Lichtenstein – occurred in New York. Plaintiff cites no authority which provides that a New York injury occurs when a New York attorney issues a demand letter on behalf of a non-domiciliary client related to events occurring outside of New York. Accordingly, default judgment is also denied for failure to demonstrate the alleged tortious acts caused injury in New York.

Similarly, plaintiff has not demonstrated facts that establish defendants should have reasonably expected their alleged acts to have consequences in New York. As set forth in the first default judgment motion, defendants' mere solicitation of business without evidence of actual transactions or a sustained and purposeful business presence in New York is not enough (*see e.g. Walden v Fiore*, 571 US 277 [2014]; *Waggaman v Arauzo*, 117 AD3d 724 [2d Dept 2014] *lv. to app. denied* 24 NY3d 903 [2014]; *Paterno v Laser Spine Inst.*, 112 AD3d 34, 43 [2d Dept 2013]). Notably absent from this motion is any proof that the defendants have sought to sell the painting in New York, such as communication with an auction house, sales contracts or solicitations. Instead, plaintiff merely concludes that defendants have attempted to sell the painting in New York. This is insufficient to find that defendants should reasonably expect that their alleged actions would have consequences in New York. Accordingly, default judgment is also denied for failure to demonstrate that defendants should reasonably expect their alleged acts to have consequences in New York.

Finally, there is no proof that defendants, natural persons, have derived substantial revenue from interstate or international commerce, as there is no proof that defendants derived any revenue at all (*Waggaman*, 117 AD3d at 725; *compare Halas v Dick's Sporting Goods*, 105 AD3d 1411 [4th Dept 2013] [non-domiciliary manufacturer of hunting equipment had distribution arrangement with multi-state sporting goods store]; *Darrow v Deutschland*, 119 AD3d 1142 [3d Dept 2014] [non-domiciliary corporation had exclusive distribution agreement with sister company selling product in New York]). Notably, there is no proof that the defendants have sold or attempted to sell the painting; thus, there can be no revenue from the painting. Plaintiff's conclusory allegation that defendants derive substantial international revenue is insufficient to exercise jurisdiction under CPLR § 302(a)(3) (*Cotia [USA] Ltd. v. Lynn Steel Corp.*, 134 AD3d 483, 485 [1st Dept 2015]). Accordingly, default judgment is also denied for failure to demonstrate that the defendants derive substantial revenue from international or New York commerce.

CPLR § 302(a)(3) does not provide for jurisdiction under circumstances such as this where a non-domiciliary plaintiff is attempting to assert jurisdiction over non-domiciliary defendants for alleged tortious acts that occurred outside of New York that did not cause injury in New York and where there is no evidence that defendants derive substantial revenue from New York or international commerce. Put simply, there are no facts establishing a sufficient

connection between New York and the Swiss defendants or the injuries alleged for this Court to exercise long-arm jurisdiction (*Walden*, 571 US at 285 ["[P]laintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction"]). Accordingly, the motion must be denied.

III. Dismissal

It is well established that the Court's *sua sponte* dismissal of an action is to be used sparingly and only upon extraordinary circumstances (*Deutsche Bank Nat. Trust Co. v Meah*, 120 AD3d 465 [2d Dept 2014]). Extraordinary circumstances warrant dismissal of this action.

Where the Court lacks jurisdiction over the parties or a matter, it necessarily lacks the ability to resolve the dispute and *sua sponte* dismissal is appropriate (*Miller v 21st Century Fox America, Inc.*, 180 AD3d 608 [1st Dept 2020] [Trial court properly dismissed action *sua sponte* after denying default judgment motion for want of personal jurisdiction]; *see also Rodriguez v Diaz*, 217 AD3d 612 [1st Dept 2023] ["Supreme Court lacked jurisdiction over this collateral attack on a decision of the Florida courts. Thus, it properly dismissed the complaint sua sponte"] [internal citations omitted]). To find otherwise would result in the absurd circumstance where this matter remains pending in a Court which cannot, as a matter of law, exercise jurisdiction over the defendants to provide the relief sought. Accordingly, because this Court lacks jurisdiction over defendants, there is nothing else for the Court to decide, and dismissal is appropriate.

Conclusion

Accordingly, it is

ORDERED that plaintiff's default judgment motion is denied; and it is further

ORDERED that the matter is dismissed and shall be marked disposed.

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2/9/2026
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**