

**People ex rel. James v UBS Fin. Servs. Inc.**

2026 NY Slip Op 31225(U)

March 27, 2026

Supreme Court, New York County

Docket Number: Index No. 450855/2026

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57

Justice

-----X

PEOPLE OF THE STATE OF NEW YORK, EX REL.
LETITIA JAMES, ATTORNEY GENERAL OF THE STATE
OF NEW YORK,

Petitioner,

INDEX NO. 450855/2026

MOTION DATE 02/13/2026,
02/26/2026

MOTION SEQ. NO. 001 002

- v -

UBS FINANCIAL SERVICES INC., MARIA N. GIARDINA-
FIEL, CRYSTAL GIARDINA, ROBERT L. GIARDINA

Respondents.

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 23, 24, 25
were read on this motion to/for TURNOVER PROCEEDING

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21,
22, 26, 27, 28, 30
were read on this motion to/for AMEND CAPTION/PLEADINGS

BACKGROUND

Petitioner obtained a judgment against Robert L. Giardina (RG) in the Supreme Court of
the State of New York, County of New York, in the action People of the State of New York v.
Richmond Capital Group LLC, et al., Index No. 451368/2020, in the amount of \$78,528,382.62,
based upon the allegations that RG issued fraudulent and usurious loans and illegally collected
on those loans. The judgment was entered on April 11, 2024.

Petitioner then commenced the instant matter seeking an order for Respondents to
turnover 158,800.00 shares of New Found Gold Corp that RG and his wife Crystal Giardina
allegedly transferred when the prior litigation against RG was pending.

By Decision and Order dated February 19, 2026, the Appellate Division, First Department, affirmed liability *People of the State of New York v. Richmond Capital Group LLC*, et al., Index No. 451368/2020, including personal and joint-and-several liability as to RG, but vacated the monetary aspect of the judgment, remanding the matter for recalculation of restitution.

Petitioner admits that in light of the vacatur of the monetary aspect of the judgment, the appropriate procedural vehicle for relief is a plenary action under Article 10 of the New York Debtor and Creditor Law.

Petitioner subsequently moved on March 26, 2026, pursuant to CPLR 103(c), seeking to convert this special proceeding into a plenary action, directing that the annexed Verified Complaint be filed under the existing Index Number, and directing that this matter proceed as a plenary action under Article 10 of the New York Debtor and Creditor Law.

UBS appeared and filed partial opposition, asserting it takes no position with respect to the merits of Petitioner's motion or its claims against the other Respondents in this action, but states it does not have the ability to turnover the shares to the Sheriff. Instead, UBS maintains it may only liquidate the shares and transfer the proceeds, less applicable commissions and fees, as may be directed by the Court.

The other Respondents have failed to appear or submit opposition.

### DISCUSSION

A turnover proceeding pursuant to CPLR §5225 is a post-judgment enforcement mechanism and depends upon the existence of a valid, subsisting judgment. Where the underlying judgment has been vacated, the basis for the relief no longer exists and the proceeding cannot be maintained.

Here, because the judgment upon which the petition is based has been vacated on appeal, Petitioner lacks any legal basis to obtain turnover relief. Accordingly, the petition must be denied.

Petitioner attempts to cure this by moving to convert this proceeding into a plenary action. While CPLR 103(c) permits a court, in its discretion, to convert a proceeding brought in an improper form into the proper form, such relief is not warranted here. Petitioner is seeking to initiate new and independent causes of action, specifically for fraudulent transfer and a request for a constructive trust, on an amount of damages that has yet to be determined, as the underlying action has been remanded back to the Supreme Court.

Petitioner's proposed amended complaint constitutes new and independent causes of action, not merely a correction in the form of the proceeding.

WHEREFORE, it is hereby


ADJUDGED the turnover petition is denied; and it is further

ORDERED and ADJUDGED Petitioner's motion to convert this proceeding into a plenary action is denied without prejudice to commencement of a plenary action; and it is further

ORDERED that, within 20 days from entry of this order, Petitioner shall serve a copy of this order with notice of entry on all parties and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk 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](http://www.nycourts.gov/supctmanh)).

This constitutes the decision and order of the court.

<u>3/27/2026</u>			
DATE			SABRINA KRAUS, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE