

Fieldpoint Private Bank & Trust v Arora
2026 NY Slip Op 31989(U)
May 7, 2026
Supreme Court, New York County
Docket Number: Index No. 652358/2025
Judge: Anar Rathod Patel
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

-----X

FIELDPOINT PRIVATE BANK & TRUST,	INDEX NO.	<u>652358/2025</u>
Plaintiff,	MOTION	
- v -	DATE	<u>04/03/2026</u>
RAJNISH ARORA AND SHIVANI ARORA,	MOTION SEQ.	
Defendants.	NO.	<u>002</u>

**DECISION + ORDER ON
MOTION**

-----X
HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 2, 14–20 were read on this motion to/for RENEW/REARGUE/RECONSIDER.

Plaintiff Fieldpoint Private Bank & Trust (“Plaintiff”) moves, pursuant to CPLR § 2221(e), seeking leave to renew its prior Motion for Summary Judgment in Lieu of Complaint (Motion 001) and, upon renewal, moves, pursuant to CPLR § 3213, for summary judgment in lieu of complaint against Defendants Rajnish Arora and Shivani Arora (collectively, “Defendants” or “Guarantors”) in the amount of \$2,038,197.29, excluding attorneys’ fees and expenses incurred in connection with this action. For the reasons as set forth herein, Plaintiff’s Motion is DENIED.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Plaintiff commenced this action on April 9, 2025, with the filing of Motion 001, noticed for a return date July 28, 2025. NYSCEF Doc. No. 2 (Notice of Motion for Summary Judgment in Lieu of Complaint). Defendants did not file an opposition or otherwise appear in this action. On August 2, 2025, the Court issued a Decision and Order denying the motion, without prejudice, for failing to file “an affirmation of service or proof of service on Defendants.” NYSCEF Doc. No. 18 (8/2/25 Decision and Order). Thereafter, on November 7, 2025, Plaintiff’s counsel filed a letter detailing its attempts to serve Defendants and “respectfully request[ing] that the Court take this explanation into consideration in evaluating the procedural history of the case, and that no prejudice be found as a result of the filing delay.” NYSCEF Doc. No. 20 (11/7/25 Letter).

Plaintiff now seeks renewal of Motion 001 alleging that Defendants were timely served, notwithstanding that Plaintiff did not file proof of service prior to the Court’s Decision and Order, nor did Plaintiff seek any adjournment of the July 8, 2025 return date given the various issues detailed in the 11/7/25 Letter. Plaintiff argues that the Court should grant the instant motion for renewal, because “Plaintiff now submits precisely what the Court found to be missing when issuing its decision: the filed service papers themselves and counsel’s explanation for why those papers

were not on the docket when the motion was decided.” *Id.* at 4–5. Plaintiff further argues that “these materials are new within the meaning of CPLR § 2221(e)[,] were not before the Court on Motion Sequence 001, and they would have changed the prior determination because they cure the only deficiency identified in the Order.” *Id.* at 5. Plaintiff misapprehends the legal standard under CPLR § 2221(e).

In support of the instant motion, Plaintiff submits the attorney affirmation of Joshua T. Reitzas, *Esq.* concerning the “substantial efforts” of Plaintiff to serve Defendants with “the summons with notice, the CPLR § 3213 motion, the memorandum of law, and the supporting exhibits” (the “Papers”). NYSCEF Doc. No. 16 at ¶ 6 (Reitzas Aff.). Specifically, the Reitzas Affirmation states that Plaintiff retained a process server on June 26, 2025, directing service at Defendants’ residence in Ohio. *Id.* at ¶ 7. After unsuccessful attempts, Plaintiff located an “alternate address associated with Defendants: 4800 N. Federal Highway, Suite 2008, Boca Raton, Florida.” *Id.* at ¶¶ 8–11. The Reitzas Aff. avers that the address is a co-working shared office space with a common front desk, and that front desk personnel confirmed that Defendants operated a business named “Just Funky” in Suite 28; however, multiple attempts to serve Defendants at that location failed. *Id.* at ¶¶ 12–13. Plaintiff alleges that it effectuated service of process for each Defendant on July 16, 2025, by “affixing the papers to the door of the Florida premises and mailing copies by first-class mail.” Reitzas Aff. at ¶ 14.

LEGAL DISCUSSION

A motion for leave to renew is “intended to bring new or additional facts to the court’s attention, which, although in existence at the time the original motion was made, were unknown to the movant and were, therefore, not brought to the court’s attention.” *Tishman Constr. Corp. of N.Y. v. City of New York*, 280 A.D.2d 374, 376 (1st Dept. 2001) (internal citation omitted) (emphasis added). The First Department consistently holds that facts known to a party, but not presented to the court, are not considered “new” facts for purposes of a motion for leave to renew. *Lower East Side II Assoc., L.P. v. 349 E. 10th St., LLC*, 118 A.D.3d 607, 607 (1st Dept. 2014) (citing to *Tishman*, 280 A.D.2d at 376) (denying leave to renew when party had knowledge of an expert affidavit, two weeks prior to the deadline for opposition papers, yet failed to provide the affidavit to the court). “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.” *Carmike Holding I, LLC v. Smith*, 180 A.D.3d 744, 747 (2d Dept. 2020) (internal citation and quotation omitted). Plaintiff must show the motion to renew is based upon facts “that would change the prior determination” CPLR § 2221(e)(2). Additionally, Plaintiff carries the burden of providing the court a “reasonable justification for the failure to present such facts on the prior motion.” CPLR § 2221(e)(3).

Here, the record establishes that Plaintiff was in possession of the purported new facts prior to July 28, 2025—the return date of Motion 001. *See* 11/7/25 Letter. Although Plaintiff received the Affidavits of non-service on August 4, 2025, Plaintiff was fully aware that Motion 001 lacked the requisite affidavits. *Id.* Plaintiff waited until August 29, 2025, to file proof of service—twenty-five days after the Court issued its Decision and Order. NYSCEF Doc. No. 12 (“Proof of Service”). Plaintiff advises that it “made continuous efforts to ensure that service was properly effected” and “followed up repeatedly with the process server to obtain the necessary documentation for filing,” further proving these “new facts” were contemporaneously known to

Plaintiff. 11/7/25 Letter at 3. Notably, Plaintiff’s reliance on *Carmike Holding I, LLC v. Smith* is misplaced. There, the Second Department held that “new or additional facts either must have not been known to the party seeking renewal or may, in the Supreme Court’s discretion, be based on facts known to the party seeking renewal at the time of the original motion.” 180 A.D.3d 744, 747. “However, in either instance, a reasonable justification for the failure to present such facts on the original motion must be presented.” *Id.* Reasonable justification does not exist where the “new facts”—*i.e.*, that Plaintiff had not effectuated service of process in support of Motion 001—were known to Plaintiff at the time the initial motion was made. Essentially, Plaintiff admits that its initial motion was deficient, it did not alert the Court of said deficiency or seek an adjournment of the motion to cure the known deficiency. Rather, Plaintiff has consumed judicial resources to decide a motion that it knew to be deficient.

Even if, *arguendo*, the Court, in its discretion, deemed the belatedly filed proofs of service to be “new facts,” it would not cure the defect. Process Server Wayne Pollick affirmed on July 17, 2025, that “[o]n July 8, 2025 at 10:45 AM at 4800 Federal Hwy Ste 200B, Boca Raton, FL 33431[] Suite #28, deponent served the within [papers] on” each individual Defendant. NYSCEF Doc. No. 19, at 1–2 (“Affirmations of Service”). The process server does not indicate, as required on the affirmation of service form, whether the process server affixed the Papers to the door of a place of business, or a residential property. The form states, “[b]y affixing a true copy of each to the door of said premises, which is recipient’s: [] actual place of business” or “[] dwelling house (usual place of abode) within the state,” and requires the process server to select/mark the box corresponding to the appropriate premises type. Affirmations of Service at 1–2. Neither box on either form contains an “X,” or any other mark. *See id.*

This omission is noteworthy because of the contradictory information submitted with respect to whether the process server left the Papers at a business or residence. Plaintiff’s 11/7/25 Letter states “our law firm ran a background check on both Defendants and further researched their property records. The search yielded an alternate residence owned by Defendants, located at 4800 Federal Hwy STE 2008, Boca Raton, FL 33431.” 11/7/25 Letter at 2. The letter makes no reference to this location as anything other than a residence. By contrast, Plaintiff’s counsel also claims it “identified an alternate address associated with Defendants: 4800 N. Federal Highway, Suite 2008, Boca Raton, Florida 33431” and that “the Florida address was confirmed with the front desk of the shared office location as a business address used by Defendants and that Defendants operated there in Suite 28 through a business identified as ‘Just Funky.’” Reitzas Aff. at ¶¶ 11, 13. The Reitzas Affirmation makes no reference to this location as anything other than a business address. Plaintiff’s counsel also alleges that after failed attempts at personal service, the process server affixed the Papers to the “door of the premises” located “at the Defendants’ Boca Raton residence.” 11/7/25 Letter at 2. This is inconsistent with the Reitzas Affirmation and the Affidavits of Service. *See* Reitzas Aff. at ¶¶ 13–14; Affirmations of Service.

[INTENTIONALLY LEFT BLANK]

Accordingly, it is hereby,

ORDERED that Plaintiff's Motion to Renew is DENIED in its entirety.

The foregoing constitutes the decision and order of the Court.



May 7, 2026
DATE

ANAR RATHOD PATEL, A.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"/>	GRANTED IN PART	<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