



Must New York courts have personal jurisdiction over a defendant before they can recognize a judgment of a sister state under the Full Faith and Credit Clause of the Constitution? The Appellate Division, Second Department addressed that novel question recently, and held that they do not. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

INSURANCE LAW, DEFENSE AND INDEMNIFICATION

Geiger v Hudson Excess Ins. Co., 2025 NY Slip Op 04609 (1st Dept August 07, 2025)

Issue: Does an agreement not to execute a judgment in exchange for the assignment of the rights of the insured constitute a "release" that would eliminate an insurer's obligation to indemnify the insured for the judgment?

Facts: Hudson Excess Insurance Company and Lancer Indemnity Company issued separate commercial insurance policies, each covering different periods, to Vola Corp., which operated a night club under the name Sorry not Sorry in Forest Hills, Queens. Vola was sued in federal court by plaintiffs—professional models and social media influencers—who alleged that "Vola improperly and knowingly used their images and likenesses in advertising without their consent and without payment. Vola tendered the defense of the Vola action to each insurer and sought indemnity, but both companies denied Vola's request for defense and indemnification. Plaintiffs and Vola eventually entered into a settlement agreement and consent judgment in the Vola action, pursuant to which Vola assigned to plaintiffs its right to prosecute its coverage claims against Hudson and Lancer and to recover the amount of the judgment and defense costs. Plaintiffs then commenced this action against Hudson and Lancer seeking, among other things, a declaration that Hudson and Lancer had a duty to defend and indemnify Vola in the underlying federal action."

Supreme Court, among other things, held that Lancer had a duty to defend the Vola action, but not to indemnify Vola for the judgment.

Holding: The Appellate Division, First Department agreed that Lancer had a duty to defend the Vola action under its insurance policy, but disagreed that Lancer did not have a duty to indemnify Vola for the consent judgment. The "underlying Vola action was resolved by a settlement agreement including a consent judgment, by which plaintiffs agreed to forgo execution of the judgment in consideration for Vola's assignment of its rights against its insurers to plaintiffs." The Court rejected Lancer's argument that because the language of the consent judgment in the Vola action contained a release, "it relieves its insured (Vola) of any liability, thereby extinguishing any duty Lancer had to indemnify."

The Court explained, "[a] release is an executed agreement that requires no further performance, effecting an outright cancellation or discharge of the entire obligation. A valid release generally constitutes a complete bar to an action on a claim which is the subject of the release. On the other hand, a covenant not to execute a judgment is not a complete release from liability. Rather, a covenant not to execute constitutes an agreement to exercise forbearance from asserting any claim which either exists or which may accrue regardless of any potential liability. Thus, a covenant not to execute is distinguishable from a release, since a release eliminates or destroys liability while the covenant does not relinquish a right or claim or extinguish a cause of action, but recognizes the continuation of the obligation or liability, and the party making the covenant agrees only not to assert any right or claim based upon the obligation."

Here, the Court held that "[a]lthough the [settlement agreement] is entitled "Settlement Agreement and Release," in our view, it cannot be read as a release, but rather should be considered as a covenant not to execute. Unlike a release, a covenant not to execute is not a present abandonment or relinquishment of a right or claim but is an agreement whereby an injured party promises not to assert a claim against others in exchange for some consideration; and unless the consideration given fully satisfies the injured party's claim, the covenant not to execute does not release the others from liability."

Although New York precedent has not addressed this type of settlement agreement, "[m]ost jurisdictions . . . have held that a plaintiff's promise not to execute on the judgment in exchange for the assignment of the rights of the insured does not extinguish either the insured's responsibility for the plaintiff's damages or the underlying tort liability . . . In contrast, although the minority view, some courts have held that a plaintiff's promise not to execute on a consent judgment against the insured operates as a general release, and the release of the insured relieves the insurer of liability.

We conclude that the majority view represents the sounder position — that a stipulated judgment, accompanied by a covenant not to execute and an assignment of claims can be enforced against an insurer. It is not difficult to find justification for the prevailing view when

we consider that any scenario wherein an insured is assigning its claims against its insurer to a plaintiff, in exchange for a covenant not to execute, necessarily takes place when the insured has been abandoned by its insurer. In New York, an insurer that breaches its duty to defend a claim for loss that is covered under its policy will be held liable for the insured's reasonable settlement of that claim, regardless of whether the insurer consented to such settlement. Thus where, like here, the insurance provider is the one potentially in breach of the insurance contract, the insured is justified in taking affirmative steps to limit its own liability by assigning its claims against its insurer to the plaintiff in exchange for a covenant not to execute on the consented to judgment, as long as the insured has acted reasonably and in good faith (which is not in dispute here)."

SECOND DEPARTMENT

CIVIL PROCEDURE, FULL FAITH AND CREDIT

Cadlerock Joint Venture, L.P. v Simms, 2025 NY Slip Op 04541 (2d Dept August 6, 2025)

Issue: Must New York possess personal jurisdiction over a defendant in order for the plaintiff to obtain recognition and potential enforcement of a foreign judgment in New York?

Facts: After obtaining a default judgment against the defendant in North Carolina, the plaintiff sued in New York, asking the courts to recognize and enforce the North Carolina judgment. Plaintiff brought a CPLR 3213 motion for summary judgment in lieu of complaint, and defendant cross-moved to dismiss, arguing that New York lacked personal jurisdiction over him and could not therefore recognize the North Carolina judgment. Plaintiff replied that "lack of personal jurisdiction in New York was not a cognizable defense to an action seeking to domesticate a judgment from another state." Supreme Court granted defendant's cross motion to dismiss, holding that New York lacked jurisdiction over defendant and thus could not recognize the foreign judgment.

Holding: The Appellate Division, Second Department reversed, explaining that the Constitution's Full Faith and Credit clause "requires each State to recognize and give effect to valid judgments rendered by the courts of its sister States. To facilitate fulfilling this constitutional obligation and to assist in the enforcement of judgments entitled to full faith and credit, the New York Legislature adopted the Uniform Enforcement of Foreign Judgments Act, which provides a simple procedure by which a judgment creditor may file an authenticated copy of a judgment rendered by a court entitled to full faith and credit in New York. Once filed, and after certain other conditions have been met, the foreign judgment shall be treated in the same manner as a judgment of New York and may be enforced in like manner as a judgment rendered in New York. There is no explicit requirement in the Foreign Judgments Act that New York have personal jurisdiction over the judgment debtor before the foreign judgment may be filed and treated as a New York judgment." Although a foreign judgment entered on default is not entitled to the same simplified recognition process, a party may still seek to have the foreign judgment recognized and enforced in New York by way of a plenary action or a CPLR 3213 motion for summary judgment in lieu of complaint.

The Due Process Clause "limits the power of a state court to render a valid personal judgment against a nonresident defendant" where the defendant has no contacts, ties, or property in the forum state. Nevertheless, the Court explained, although no dispute existed that New York would not have had personal jurisdiction over defendant to adjudicate the underlying dispute, "[t]he plaintiff . . . is not asking the New York courts to consider the merits of the underlying action, only to recognize the judgment entered by the North Carolina court so as to make it enforceable in New York. A cause of action on a judgment is different from that upon which the judgment was entered . . . A judgment rendered by another court entitled to full faith and credit generally can only be challenged in another forum upon the ground that the court that rendered the judgment lacked the jurisdiction to do so."

Here, the Court held, the defendant did not challenge the jurisdiction of the North Carolina courts to issue the judgment. Rather, he merely argued that New York could not recognize it, under the Full Faith and Credit Clause, because New York lacked personal jurisdiction over him. "The Full Faith and Credit Clause . . . makes the valid in personam judgment of one State enforceable in all other States. The judgment debtor's liberty interest that is protected by the Due Process Clause of the Fourteenth Amendment is satisfied by the debtor's relationship to the state that rendered the judgment in the first instance and the opportunity to litigate the merits there. Recognition and enforcement of that judgment in New York, which cannot review the underlying merits, does not offend due process where the judgment debtor has not challenged the jurisdiction of the issuing court . . . Accordingly, we hold that New York need not possess personal jurisdiction over the defendant judgment debtor in order to recognize and domesticate a judgment entitled to full faith and credit."

CasePrepPlus | August 22, 2025

© 2025 by the New York State Bar Association

To view archived issues of CasePrepPlus,
visit [NYSBA.ORG/caseprepplus/](https://nysba.org/caseprepplus/).

