

09-5368-CV

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

SINOYING LOGISTICS PTE LTD.,
ACOAXET SHIPPING PTE LTD,

Plaintiffs-Appellants,

THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED,

Intervenor-Plaintiff,

—against—

YI DA XIN TRADING CORPORATION,
YI DA XIN TRADING CO. LTD.,
YI DA XIN LIMITED,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF *AMICUS CURIAE*
THE CLEARING HOUSE ASSOCIATION L.L.C.
IN SUPPORT OF AFFIRMANCE

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PRELIMINARY STATEMENT

The Clearing House Association L.L.C. (the “Clearing House”)¹ submits this brief as *amicus curiae*, in response to the invitation extended in this Court’s June 14, 2010 Order, to (1) support affirmance of the December 15, 2009 order of the District Court to help ensure that District Courts are able to efficiently vacate the remaining attachment orders that have disrupted the international funds transfer process; and (2) respond to certain questions posed by the Court during oral argument on June 23, 2010.

This appeal arises from the vacatur of one of the myriad of maritime-attachment orders entered by courts in the Southern District of New York that, under the now-overruled authority of *Winter Storm Shipping, Ltd. v. TPI*, 310 F.3d 263 (2d Cir. 2002), previously enabled maritime plaintiffs to attach electronic fund

¹ The Clearing House is an association of leading commercial banks that, through an affiliate, provides payment, clearing and settlement services to its member banks and other financial institutions. The members of the Clearing House are: Bank of America, N.A.; The Bank of New York Mellon; Capital One, N.A.; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, N.A.; JPMorgan Chase Bank, N.A.; The Royal Bank of Scotland, N.V.; UBS AG; U.S. Bank N.A.; and Wells Fargo Bank, N.A.

transfers² (“EFTs”) that passed momentarily through intermediary banks located in New York.

This Court put an end to that attachment practice in *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58, 71 (2d Cir. 2009), *cert. denied*, 130 S. Ct. 1896 (2010), which held that “EFTs in the temporary possession of an intermediary bank are not property of either the originator or the beneficiary under New York law” and therefore “cannot be subject to attachment” under Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (“Rule B”). Critical to this ruling, which expressly overruled *Winter Storm*, was this Court’s recognition that *Winter Storm* “not only introduced uncertainty into the international funds transfer process, but also undermined the efficiency of New York’s international funds transfer business.” *Jaldhi*, 585 F.3d at 62 (internal quotation marks and citation omitted). Shortly thereafter, in *Hawknet, Ltd. v. Overseas Shipping Agencies*, 590 F.3d 87, 91 (2d Cir. 2009), this Court held that “the rule announced [in *Jaldhi*] has retroactive effect to all cases open on direct review.”

² An EFT is a “series of transactions, beginning with the originator’s payment order, made for the purpose of making payment to the beneficiary of the order.” N.Y. U.C.C. Law § 4-A-104(1).

This appeal, brought by Sinoying Logistics Pte Ltd. and Acoaxet Shipping Pte Ltd. (“Sinoying”), falls squarely within *Jaldhi*’s and *Hawknet*’s holdings. Sinoying sued Yi Da Xin Trading Corporation, et al. (“YDX”), a foreign defendant not present in New York, solely on the basis that EFTs of which YDX was either the originator or the beneficiary might pass through intermediary banks in New York. Yet throughout this appeal, Sinoying acts as though the fundamental holding of *Jaldhi* and *Hawknet* was never reached. Sinoying refers throughout its brief to the restrained EFTs as “YDX Funds,” *see, e.g.*, Sinoying Br. at 9, even though *Jaldhi* made clear that these EFTs “are not property of either the originator or the beneficiary.” *Jaldhi*, 585 F.3d at 70. Sinoying’s false premise is the foundation for its appeal.

This case is one of a series of Rule B lawsuits in which the District Court has issued a post-*Jaldhi* order to show cause why a maritime attachment complaint should not be dismissed, and then dismissed it.³ *Hawknet* decided that

³ In fact, this Court has itself instructed District Courts to reconsider their attachment orders by issuing orders to show cause. *See Hawknet*, 590 F.3d at 93 (remanding “with instructions to enter an order to show cause why [the District Court] should not dismiss the complaint for lack of personal jurisdiction.”); *Flame S.A. v. Primera Maritime (Hellas) Ltd.*, 358 F. App’x 222, 223 (2d Cir. Dec. 21, 2009) (vacating district court order and remanding “with instructions [for the District Court] to enter an order to show cause why it should not dismiss the complaint for lack of personal jurisdiction in light of the[] recent decisions [of *Jaldhi* and *Hawknet*].”); *Annapolis Shipping Co., Ltd. v. China Nat’l Mach. Import* (continued)

where a defendant had appeared but, pre-*Jaldhi*, had not raised a lack of personal jurisdiction defense, that defendant was not barred from raising that newly relevant defense post-*Jaldhi*. This appeal raises the question whether, after plaintiff had pleaded that defendant was not present in this district and defendant did not appear, the District Court had discretion to issue an order to show cause and dismiss the case for lack of personal jurisdiction. Sinoying contends that, notwithstanding *Hawknet*'s unequivocal ruling that *Jaldhi* applies retroactively to "all cases open on direct review," Judge Chin (1) lacked the power to vacate the attachment by order to show cause; and (2) should have considered whether to maintain an otherwise void attachment based on the equities of this case. These contentions should be rejected.

First, the District Court acted within its discretion in vacating an invalid order of attachment. Judge Chin had the inherent authority to re-visit any prior interlocutory order, particularly after an appellate ruling that removed the basis for that order. It is immaterial that the defendant had not appeared. Rule B(1)(b) itself authorizes a District Court to deny an application for an attachment

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& *Export Corp.*, 354 F. App'x 534, 535 (2d Cir. Dec. 1, 2009) (same); *Optimum Shipping & Trading S.A. v. Prestige Marine Servs. Pte. Ltd.*, 354 F. App'x 532, at *1 (2d Cir. Dec. 1, 2009) (same).

order, and the District Court certainly retains that power when the plaintiff has pled that the defendant is not to be found in the district and the Second Circuit has held that the defendant has no attachable property interest at the intermediary bank, the sole basis for jurisdiction in the first place. Moreover, a District Court is authorized to dismiss a complaint *sua sponte* for lack of personal jurisdiction when considering whether to enter a default judgment, *see, e.g., In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999), and thus has the discretion to exercise the same authority based on plaintiffs' multiple representations that the defendant is not in the district.

Rule B attachments are normally sought and obtained *ex parte*, and District Courts are required under Rule B(1)(b) to review a plaintiff's complaint before entering any attachment order. Because a plaintiff is required to allege that "the defendant's property may be found within the district" in order for "an attachment [to] issue," *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 445 (2d Cir. 2006), a District Court is authorized, if not required, to deny *sua sponte* an attachment order and dismiss a complaint that does not seek to attach property in the district that belongs to a defendant. A "district court must vacate an attachment if the plaintiff fails to sustain his burden of showing that he has satisfied the requirements of Rules B and E." *Id.*

Further, when a court is considering whether to enter a default judgment, it must determine on its own motion whether it has personal jurisdiction.

See, e.g., Dawn Shipping Ltd. v. C & Merch. Marine Co. Ltd., 2009 WL 4729878 (S.D.N.Y. Dec. 9, 2009). Here, the District Court was clearly authorized to raise the personal jurisdiction issue *sua sponte* because plaintiffs already had pled that defendant was absent from New York, and that the transaction at issue involved only the Philippines and China. Sinoying’s contention that YDX “impliedly ha[d] consented to personal jurisdiction by failing to assert any personal jurisdiction defense,” Sinoying Br. at 1-2, and Sinoying’s position that a District Court may not dismiss a complaint for lack of personal jurisdiction unless a defendant appears to raise that defense, Sinoying Br. at 14-19, would lead to this absurd proposition: A plaintiff should always sue a defendant where it has no presence, because the defendant may well not appear. That way, one creates personal jurisdiction over the defendant by its absence, and there is nothing a court can do about it.

Second, Sinoying’s attempt to carve out an equitable exception to *Jaldhi*’s retroactive application based on the “specific circumstances of the case,” Sinoying Br. at 2, is foreclosed directly by *Hawknet* and the seminal Supreme Court case—*Harper v. Virginia Department of Taxation*, 509 U.S. 86 (1993)—that *Hawknet* was bound to follow. *Hawknet* stated clearly that the rule announced in *Jaldhi* “has retroactive effect to all cases open on direct review,” notwithstanding the “parties[’] reli[ance]” on *Winter Storm* “when structuring their transactions.” *Hawknet*, 590 F.3d at 91 & n.7. The “presumption” of retroactivity referred to in

Hawknet did not introduce a facts-and-circumstances approach based on the equities of each case, but was used—accurately—to signal that *Harper*’s retroactivity rule may be trumped only in specific circumstances not present here. Indeed, the Supreme Court in *Harper* made clear that, when fashioning its retroactivity rule, the Court specifically rejected any approach that would permit “‘the substantive law [to] shift and spring’ according to ‘the particular equities of [individual parties’] claims’ of actual reliance on an old rule and of harm from a retroactive application of the new rule.” *Harper*, 509 U.S. at 97 (alterations in original).

For these reasons, Sinoying’s attempts to restrict District Courts from vacating invalid attachment orders should be rejected.

BACKGROUND

1. Questions Asked by the Court.

At oral argument on June 23, 2010, the Court asked the Clearing House to look into certain questions. One was: how does a “suspense account” work? When a funds transfer order is accepted, the most common method of paying the intermediary bank is by debiting an account of the sending bank at the

intermediary bank. *See* N.Y. U.C.C. Law § 4-A-403(1)(c).⁴ This means that the intermediary bank's obligation to the sending bank is reduced by the amount of the transfer, and replaced by an obligation to the next receiving bank, which is immediately honored. Since 2002, when *Winter Storm* was decided, maritime plaintiffs attached and disrupted hundreds of EFTs, seeking to attach well over \$1 billion. Intermediary banks commonly responded to these attachment orders by adding the amount of the EFT to a "suspense account," essentially a bookkeeping entry that records the amount of the EFT as an obligation or liability under "legal hold" or something similar. As before the EFT was interrupted, neither the originator nor the beneficiary of the EFT has any rights regarding the suspense account.

Another question from the Court was: how have vacated attachment orders been resolved at the banks? When a court vacates an attachment order, the process is typically straightforward. Under N.Y. U.C.C. Law § 4-A-402(4), if a payment order has not been "accepted" as intended, the intermediary bank is obligated to refund the amount of the EFT to the sending bank, *i.e.*, the bank that transmitted the order to the intermediary bank. If a court specifically orders how

⁴ If a sending bank does not have an account at the intermediary bank, payment may also be made through final settlement by a funds transfer system. *See* N.Y. U.C.C. Law § 4-A-403(1)(a).

the obligation is to be treated, however, the intermediary bank follows that instruction.

The Court also asked about the status of maritime-attachment cases in the wake of *Jaldhi*. Intermediary banks have experienced a dramatic change from the days of *Winter Storm*, where hundreds of maritime writs were being served each day, and the judges in the Southern District have implemented *Jaldhi* and *Hawknet* to vacate scores of maritime-attachment orders. In the week following the June 23, 2010 argument, the Clearing House has collected some information regarding these cases, and that information is included in Appendix A.⁵ While several banks have been able to supply information regarding still-pending cases (Table 3), others have not. As the Court will see, the dockets of many of these cases reflect no activity since before *Jaldhi*. If the Court desires further explanation or clarification, the Clearing House would be pleased to provide it.

2. The Attachment Order Vacated by Judge Chin.

The vacatur order at issue in this appeal is typical of the scores of such orders that have been entered by judges in the Southern District since this Court's

⁵ The Clearing House does not represent that the statistics compiled in Appendix A are complete. Rather, these statistics represent the Clearing House's best efforts, in the time between the June 23 oral argument and the date of this submission, to assemble information from its members and to review docket sheets

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rulings in *Jaldhi* and *Hawknet*. On April 21, 2008, Sinoying filed a verified complaint alleging, *inter alia*, that “defendant cannot be found within this district, but is believed to have assets within this district consisting of cash, funds, freight, hire, credits in the hands of” nine named banks and “other New York City banks and financial institutions.” Cplt. ¶ 13 (S.D.N.Y. Apr. 21, 2008). On that same day, Sinoying moved for and obtained an *ex parte* order authorizing plaintiffs to attach these assets. Ex Parte Order for Process of Maritime Attachment and Appointment to Serve Process (S.D.N.Y. Apr. 21, 2008). In that order, Judge Chin stated “[t]he Court has reviewed the Verified Complaint and the supporting affidavit . . . and finds that the requirements of Rule B appear to be satisfied.” *Id.*

Sinoying subsequently amended its complaint and obtained amended *ex parte* orders of attachment. (A-3, 6, entry nos. 5-7, 25.) Each amended complaint, like the original one, alleged that YDX could not be “found within this district.” Amended Cplt. ¶ 15 (S.D.N.Y. May 16, 2008); Second Amended Cplt. ¶ 16 (S.D.N.Y. Aug. 25, 2008). YDX never answered and never appeared.

On October 26, 2009, after this Court decided *Jaldhi*, Judge Chin issued an order to show cause ordering Sinoying to show “in writing by

(continued)

of maritime-attachment cases commenced in the Southern District of New York from January 1, 2009 to October 16, 2009, the date *Jaldhi* was decided.

November 9, 2009 why (1) the Order in this case authorizing the process of maritime attachment and garnishment should not be vacated; and (2) the complaint should not be dismissed.” (A 12.) Sinoying responded by arguing, among other things, that YDX’s failure to appear precluded the court from vacating the attachment order and that the District Court had the equitable power to maintain the attachment.

Judge Chin disagreed, and, on December 15, 2009, vacated the previously entered attachment order. (A 13-20.) In doing so, Judge Chin observed that the Second Circuit made clear that *Jaldhi* “is to be applied retroactively,” and that “[t]he appearance or non-appearance of the defendants to challenge the attachment is irrelevant.” (A 15-16.) Judge Chin also reasoned that, under *Jaldhi* and *Hawknet*, the court lacks jurisdiction “if the defendants possess no property in the district,” and that he did “not have discretion to hold otherwise, regardless of the equitable considerations.” (A 16.)

Judge Chin adhered to this reasoning when, on December 21, 2009, he denied Sinoying’s request to stay that vacatur order, though temporarily staying his order for 14 days to enable Sinoying to obtain a stay from this Court. (A 18-20.) On December 31, 2009, Sinoying and Acoaxet filed a Notice of Appeal and an “Emergency Motion” for a stay of the judgment vacating the maritime attachment. The memorandum in support of the Emergency Motion argued that the motion

should be granted because “the equities favor maintaining the status quo,” that unless the stay were granted “there would be no *res* remaining” should Appellants win their appeal, that their “prosecution of this appeal would become an empty rite” and, given that YDX had not appeared, “there is no harm in having [the suspense account] remain in place until the appeal is resolved.” Plaintiffs-Appellants’ Memorandum of Law in Support of Emergency Motion for a Stay, at 3, 7, 19, No. 09-5368-cv (Dec. 31, 2009). On January 4, 2010, this Court granted a stay pending determination by a motions panel and, on April 15, 2010, a motions panel of this Court granted Sinoying a stay pending appeal and ordered that the appeal be expedited. Order, No. 09-5368-cv (2d Cir. Apr. 15, 2010).

We have now learned that, having obtained a stay from this Court on January 4, 2010 to “maintain[] the status quo,” Acoaxet filed a notice of settlement of a proposed order in a New York state court arbitration recognition proceeding in February, 2010, seeking the attachment of the suspense accounts at issue on this appeal. *See Acoaxet 1 Shipping Pte Ltd. v. Yi Da Xin Trading Corp.*, No. 60387/09 (Sup. Ct. N.Y. County) (entry no. 3). Months after *Jaldhi*, Acoaxet represented to that Court that the amounts in the suspense accounts at the intermediary banks were YDX’s “property.” *See, e.g.*, Affidavit of Michael J. Frevola, at ¶ 2, *Acoaxet 1 Shipping Pte Ltd. v. Yi Da Xin Trading Corp.*, No. 60387/09 (Sup. Ct. N.Y. County) (entry no. 6). Defendant did not appear. The order requested by Acoaxet

was entered on April 7, 2010, and an amended order was entered on June 21, 2010, two days before oral argument before this Court.

ARGUMENT

I. EFTS AT AN INTERMEDIARY BANK ARE NOT THE FUNDS OF YDX AS ORIGINATOR OR BENEFICIARY.

The EFTs as to which defendant YDX was the originator or the beneficiary were not property of YDX at the intermediary bank when they were wrongly attached. *See Jaldhi*, 585 F.3d at 71. Nor did any principle of law create a property interest in YDX when the intermediary bank entered the EFT obligation in a suspense account. Neither an originator nor a beneficiary had any right to or control over that account.

II. THE DISTRICT COURT ACTED WELL WITHIN ITS DISCRETION IN VACATING AN INVALID ATTACHMENT ORDER.

A. Judge Chin had the Inherent Authority to Revisit his Prior Interlocutory Order.

Here, the District Court, when issuing its *ex parte* attachment order, specifically ruled that “the requirements of Rule B appear to be satisfied.” Ex Parte Order for Process of Maritime Attachment and Appointment to Serve Process (S.D.N.Y. Apr. 21, 2008); *accord* Second Amended Ex Parte Order for Process of

Maritime Attachment and Appointment to Serve Process (S.D.N.Y. Aug. 26, 2008) (same).⁶

Because this ruling required Judge Chin to determine that plaintiffs had shown that “the defendant’s property may be found within the district,” *Aqua Stoli*, 460 F.3d at 445, Judge Chin’s ruling was a typical interlocutory order which he had the authority to revisit *sua sponte*. See *United States v. LoRusso*, 695 F.2d 45, 53 (2d Cir. 1982) (“[W]hether the case *sub judice* be civil or criminal[,] so long as the district court has jurisdiction over the case, it possesses inherent power over interlocutory orders, and can reconsider them when it is consonant with justice to do so.” (quoting *United States v. Jerry*, 487 F.2d 600, 605 (3d Cir. 1973)); see also *Nationwide Mut. Ins. Co. v. Mortensen*, 606 F.3d 22, 28 (2d Cir. 2010) (finding no error in the district court’s “*sua sponte* dismissal” of certain of plaintiff’s claims, which, “[i]n effect,” consisted of the district court “revis[ing] its previous summary judgment ruling in light of the concessions that [plaintiff] made about its case.”); *In re WTC Disaster Site*, 414 F.3d 352, 381 (2d Cir. 2005)

⁶ A third *ex parte* order issued, not as a result of a new complaint, but in response to plaintiffs’ application “for an adjustment in the quantum of its attachment to account for costs, fees, and interest.” Third Amended Ex Parte Order for Process of Maritime Attachment and Garnishment (S.D.N.Y. July 2, 2009). This third order thus amended the previous one “to increas[e] the quantum of the attachment to \$649,480 . . . to fully secure Plaintiff for ongoing arbitration with Defendants.” *Id.*

("[T]he district court has the authority, as with any interlocutory order, 'to revis[e] its order] at any time before the entry of final judgment'" (quoting Fed. R. Civ. P. 54(b)) (alteration in original)); *Grace v. Rosenstock*, 228 F.3d 40, 51 (2d Cir. 2000) ("All interlocutory orders remain subject to modification or adjustment prior to the entry of a final judgment adjudicating the claims to which they pertain." (citing Fed. R. Civ. P. 54(b) and other authority)).⁷

Judge Chin's reconsideration was particularly appropriate where, as here, this Court specifically held that *Jaldhi's* ruling "has retroactive effect to all cases open on direct review." *Hawknet*, 590 F.3d at 91. That ruling expressly invited District Courts to reconsider attachment orders that should never have been issued. In case there were any doubt, several panels of this Court, including the *Hawknet* panel itself, have even instructed District Courts to do precisely what

⁷ See also *In re Saffady*, 524 F.3d 799, 801, 803 (6th Cir. 2008) (upholding district court's vacatur of summary judgment order "on its own motion" because "the order vacating the summary judgment was simply an exercise of the district court's inherent power to reopen part of a case prior to entry of the final judgment."); *Peirick v. Indiana University-Purdue University Indianapolis*, 510 F.3d 681, 694 n.5 (7th Cir. 2007) (noting that "the district court was entitled to reconsider its initial denial of summary judgment, because the denial of summary judgment was simply an interlocutory order, which the district court had broad authority to reconsider."); *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993) ("The revisitation by the court of its earlier order denying the motion to dismiss was not error, both because plaintiff had ample opportunity to respond to that motion and because a court may correct its own errors.").

Judge Chin did here—*i.e.*, issue an order to show cause to determine why the case should not be dismissed in light of *Jaldhi* and *Hawknet*. See page 3, n.3.

Hawknet did not disturb the recognized ability of a District Court, whether under its inherent authority to revisit interlocutory orders or under the authority conferred by the Supplemental Rules, *see infra*, to revisit its prior order *sua sponte*. In conjunction with its retroactivity analysis, *Hawknet* considered—as a general matter—“whether a party’s failure to assert an argument prior to the announcement of a decision which might support it constitutes waiver.” *Hawknet*, 590 F.3d at 89. In doing so, it recognized that, as with most arguments not asserted below, a party “can waive its right to challenge the district court’s personal jurisdiction over it.” *Id.* at 91 n.8. See generally *Allianz Ins. Co. v. Lerner*, 416 F.3d 109, 114 (2d Cir. 2005) (“[I]t is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal.” (alteration in original).)

But the ability of a *party* to waive an argument—which, in any event, did not happen here—does not restrict a *court* from raising an argument on its own where it is empowered to do so. *Hawknet* therefore correctly referred to *Jaldhi*’s ruling as a “new objection” that was previously unavailable to a defendant, *Hawknet*, 590 F.3d at 92, but a court still may reconsider a prior order on its own accord, *see supra*, and dismiss a complaint on its own initiative. See generally

Leonhard v. U.S., 633 F.2d 599, 609 n.11 (2d Cir. 1980) (“The district court has the power to dismiss a complaint sua sponte for failure to state a claim”); *Perez v. Ortiz*, 849 F.2d 793, 797 (2d Cir. 1988) (recognizing that “*sua sponte* dismissals may be appropriate in some circumstances,” provided that plaintiff is given an adequate “opportunity to be heard.”).

The District Court acted well within its recognized authority by reconsidering an attachment order that, under *Jaldhi* and *Hawknet*, was void on its face.

B. The Supplemental Rules Authorize a District Court to Deny or Vacate an Attachment Order Without Waiting for the Defendant to Object.

Under the Supplemental Rules in particular, the District Court is empowered to consider whether a defendant or its property is in the district without waiting for a defendant to object. Under Rule B(1)(b), before entering any attachment order, a District Judge “*must* review the complaint and [accompanying] affidavit and, if the conditions of this Rule B appear to exist, enter an order so stating and authorizing process of attachment and garnishment.” *Id.* (emphasis added). Because “[o]rders of maritime attachment may be [and normally are] requested and granted *ex parte*,” *ProShipLine, Inc. v. Aspen Infrastructures, Ltd.*, 585 F.3d 105, 111 (2d Cir. 2009) (alteration in original) (internal quotation marks

omitted), this rule in some circumstances requires a judge to *deny* an attachment order *sua sponte*.

This pre-seizure judicial review requires a court to determine whether a defendant's property is within the district. That is because, for an attachment order to issue, plaintiffs must show, among other things, that "the defendant's property may be found within the district," *Aqua Stoli*, 460 F.3d at 445,⁸ but the defendant cannot be. And, "a district court *must vacate* an attachment if the plaintiff fails to sustain his burden of showing that he has satisfied the requirements of Rules B and E." *Id.* (emphasis added). Indeed, this Court in *Jaldhi* made clear that "the *validity* of a Rule B attachment depends entirely on the determination that the *res* at issue is the property of the defendant *at the moment the res is attached*." 585 F.3d at 69 (emphasis added). Where plaintiffs fail to make this showing, any attachment is "void." *Reibor Int'l Ltd. v. Cargo Carriers (KACZ-CO.) Ltd.*, 759 F.2d 262, 263 (2d Cir. 1985) (affirming district court

⁸ See also Thomas J. Schoenbaum, Admiralty Practice & Procedure § 21-2 (West 2001) ("To secure a writ of marine attachment, four prerequisites must be met," including the requirement that "property belonging to the defendant is present or will soon be present in the district"); Robert M. Jarvis, *An Introduction to Maritime Attachment Practice Under Rule B*, 20 J. of Mar. Law & Com. 521, 526-30 (1989) (describing "four prerequisites" that plaintiff "must satisfy" in order to invoke Rule B, including requirement that plaintiff "demonstrate that property belonging to the defendant is present or soon will be present in the district in which the plaintiff files its action.").

judgment that a levy on after-acquired property is “absolutely void”); *Contichem LPG v. Parsons Shipping Co., Ltd.*, 229 F.3d 426, 433 (2d Cir. 2000) (“Rule B(1) relief is not valid where the attachment and garnishment is served before the garnishee comes into possession of the property.”).

For this reason, District Courts have denied *ex parte* attachment orders where plaintiffs had not adequately shown that defendants’ property may be found within the district. *See, e.g., DBCN v. Enersur S.A.*, 2009 WL 3254447, at *3 (S.D.N.Y. Oct. 9, 2009) (Sullivan, J.) (denying attachment where “[p]laintiff ha[d] not included ‘enough factual matter (taken as true) to suggest’ that Defendant’s property may be found in the Southern District of New York.” (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007))); *Macsteel Int’l South Africa (Pty) Ltd. v. Calypso AS*, 2009 WL 2777173, at *2 (S.D.N.Y. Aug. 31, 2009) (Batts, J.) (denying attachment where plaintiff failed to “provide[] the Court with ‘sufficient factual matter, accepted as true,’ to suggest that funds representing electronic fund transfers ori[g]inated by Defendants at the time of service, may be found in the Southern District of New York.” (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (emphasis omitted))). And, there is no question that, going forward, District Courts are empowered—in fact, required—to deny *sua sponte* any request to attach EFTs, as Sinoying concedes. *See Sinoying Br.* at

20 (“The *Jaldhi* ruling on intermediary bank EFT wire transfers is simple to implement for district courts post-*Jaldhi*.”).⁹

The District Court’s invocation of *Jaldhi* by order to show cause, and its *sua sponte* dismissal of this action due to lack of personal jurisdiction, are fully consistent with this authority.

C. A District Court is Authorized to Dismiss a Case *Sua Sponte* for Lack of Personal Jurisdiction.

1. By Failing to Appear, Defendants Preserved a Personal Jurisdiction Challenge.

Sinoying concedes that YDX “had never appeared in the proceeding below and had not appeared even after the issuance of *Jald[h]i* and the *Hawknet* decisions.” Sinoying Br. at 6; *see also id.* at 14 (acknowledging that “defendants

⁹ This Court never “hint[ed]” at a different result, *see* Sinoying Br. at 17, in *Dardana Ltd. v. A.O. Yuganskneftegaz*, 317 F.3d 202 (2d Cir. 2003). *Dardana* was not a Rule B attachment case, where courts are empowered to deny attachment orders and dismiss complaints that fail to properly allege that defendant’s property may be within the district. And it was the parties there, not the court, who had “agree[d]” that dismissal was “procedurally improper.” *Id.* at 209 n.16. That supposed impropriety could have resulted for a number of reasons unrelated to the district court’s power to dismiss *sua sponte* on personal jurisdictional grounds, including the presence of factual disputes, *see id.* at 207-08 (noting that record on appeal “is incomplete” and “remand[ing] the case to the district court for discovery” and “appropriate findings”), or the failure to provide the plaintiff with the requisite notice prior to dismissal, *see generally Perez*, 849 F.2d at 797 (recognizing that “*sua sponte* dismissals may be appropriate in some circumstances,” provided that plaintiff is given an adequate “opportunity to be heard.”).

had not even filed an answer in this matter”). Yet Sinoying nonetheless claims that YDX “impliedly ha[d] consented to personal jurisdiction by failing to assert any personal jurisdiction defense.” *Id.* at 1-2.

Sinoying is wrong. First, it is black-letter law that “[a] defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds” in later proceedings. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706 (1982). This principle applies “even as to a defendant, moving under Rule 60(b)(4), who received notice of the original lawsuit through service of process.” “*R*” *Best Produce, Inc. v. DiSapio*, 540 F.3d 115, 123 (2d Cir. 2008). The rationale for this rule is “very likely that a non-appearing defendant, even with notice, should be spared the burden of defending in a distant forum and a plaintiff should be careful to join only those defendants as to whom personal jurisdiction can successfully be established in the original action.” *Id.*

Second, even if YDX took some action pre-*Jaldhi* that could have waived its personal jurisdiction defense, *Hawknet* held that *Jaldhi* “provided defendant with a new objection to the District Court’s jurisdiction over it.” *Hawknet*, 590 F.3d at 92. The defendant in *Hawknet* had appeared, had “moved to vacate the attachment,” and had participated in “court-ordered discovery” as to whether plaintiff could pursue an alter-ego theory against it. *Id.* at 90.

Throughout, the defendant failed to make “any [personal jurisdiction] argument before the District Court.” *Id.* at 91. Nonetheless, the Court concluded that defendant “did not waive” any *Jaldhi*-based personal jurisdiction defense because “the doctrine of waiver demands conscientiousness, not clairvoyance, from parties.” *Id.*

Under any view, YDX did not waive any personal jurisdiction defense. A contrary rule would allow a plaintiff, such as Sinoying, to manufacture a default judgment without jurisdiction by suing a defendant where it is not present and unlikely to appear, and use its absence to secure a judgment.

2. Judge Chin was Authorized to Dismiss this Case *Sua Sponte* for Lack of Personal Jurisdiction.

Sinoying’s position that Judge Chin was not authorized to dismiss the case *sua sponte* for lack of personal jurisdiction ignores both its own pleadings and the practicalities of the situation. First, Sinoying had pleaded continually that defendants were not present in the district, and had based jurisdiction solely on the theory that EFTs at intermediary banks were defendants’ property. Once *Jaldhi* eliminated that theory, there was no basis to find jurisdiction over this dispute. Second, what was Judge Chin’s alternative? Even if he waited for Sinoying to move for a default judgment, he still would have to consider whether there was personal jurisdiction over defendants before entering such a judgment.

Maintaining the case on his docket in the face of pleadings that conceded that defendants were not present in the district would be a useless formality.

Because YDX had not appeared throughout the litigation and Sinoying had expressed its intention to enforce a forthcoming arbitration award, Judge Chin's alternative to vacatur and dismissal was to await plaintiff's forthcoming motion for a default judgment.¹⁰ In these circumstances, Judge Chin had the authority to consider *sua sponte* whether he had personal jurisdiction over the defendants.

This Court has recently confirmed that the ““validity of an order of a federal court depends upon that court's having jurisdiction over both the subject matter and the parties.”” *Frontera Res. Azerbaijan Corp. v. State Oil Co. of the Azerbaijan Republic*, 582 F.3d 393, 397 (2d Cir. 2009) (quoting *Ins. Corp. of Ireland*, 456 U.S. at 701). ““Some basis must be shown, whether arising from the respondent's residence, his conduct, his consent, the location of his property or

¹⁰ When seeking a stay order after Judge Chin issued his December 15, 2009 vacatur order, Sinoying's Hong Kong counsel submitted an affidavit “in support of Plaintiffs and in support of their motion to recognize and enforce the arbitral awards rendered in Hong Kong as a United States Judgment against [defendants].” Affidavit of Max Cross ¶ 2, attached as Exhibit 2 to the December 17, 2009 Declaration of Michael J. Frevola, No. 08 Civ. 3754 (S.D.N.Y. Dec. 17, 2009) (docket entry no. 41); *see also id.* ¶ 21 (“submitt[ing] that the recognition and enforcement of the [arbitration awards rendered in Hong Kong] should be made, and the [arbitration awards] should be made a Judgment of the United States.”).

otherwise, to justify his being subject to the court's power.” *Id.* Where there is no basis asserted for personal jurisdiction, and the sole basis for *quasi in rem* jurisdiction has been eliminated, no order entered could be valid and the District Court must be free to dismiss the case.

That authority is consistent with the principle that “when a court is considering whether to enter a default judgment, it may dismiss an action *sua sponte* for lack of personal jurisdiction.” *In re Tuli*, 172 F.3d at 712; *see also System Pipe & Supply, Inc. v. M/V Viktor Kurnatovskiy*, 242 F.3d 322, 324 (5th Cir. 2001) (“We previously have determined that a judgment entered without personal jurisdiction is void. It should therefore be apparent that a district court has the duty to assure [itself] that it has the power to enter a valid default judgment.” (footnote omitted)); *Dennis Garberg & Assocs., Inc. v. Pack-Tech Int’l Corp.*, 115 F.3d 767, 772 (10th Cir. 1997) (“[W]hen entry of a default judgment is sought against a party who has failed to plead or otherwise defend, the district court has an affirmative duty to look into its jurisdiction both over the subject matter and the parties.” (emphasis and internal quotation marks omitted).) That is because “[a] judgment entered without personal jurisdiction over the parties is void”; and, “[t]o avoid entering a default judgment that can later be successfully attacked as void, a court should determine whether it has the power, i.e., the jurisdiction, to enter the judgment in the first place.” *In re Tuli*, 172 F.3d at 712.

“When a default judgment is sought, the Court has an affirmative duty to assure itself that it has jurisdiction over the parties.” *Dawn Shipping*, 2009 WL 4729878, at *1.

This Court has already endorsed the reasoning behind the rule articulated in *Tuli*. This Court, like that in *Tuli*, has recognized that a District Court judgment “is void . . . if the court that rendered it lacked jurisdiction . . . of the parties.” “*R*” *Best Produce*, 540 F.3d at 123 (ellipsis in original). And, this Court has observed that there “can be no question” that a District Court has the power “to vacate its original judgment.” *Fort Knox Music Inc. v. Baptiste*, 257 F.3d 108, 111 (2d Cir. 2001). While such relief is normally “sought by motion of a party, nothing forbids the court to grant such relief *sua sponte*,” including on the ground that a court lacks “personal jurisdiction over [the defendant].” *Id.* (internal citation omitted).

After *Jaldhi*, Judge Koeltl correctly relied on *Fort Knox* to hold that the court “ha[d] the authority to vacate its original default judgment, to vacate the maritime attachment, and to dismiss th[e] case without prejudice on its own motion.” *Dawn Shipping*, 2009 WL 4729878, at *1. To hold otherwise, the court observed, would be to “sanction the enforcement of a judgment that is plainly void”—an act “[t]he Court will not do.” *Id.*

Judge Chin was faced with a similar prospect. Although Sinoying had not formally sought a default judgment at the time Judge Chin vacated the attachment order, Sinoying had expressed its intention to do so and YDX had failed to appear throughout the litigation. Had Judge Chin denied vacatur, he would have had to maintain on his docket a case that could only lead to “a judgment that [would] plainly [be] void.” *Id.*

III. *HAWKNET* HELD THAT *JALDHI* CANNOT BE SELECTIVELY APPLIED BASED ON THE SUPPOSED EQUITIES OF EACH CASE.

Sinoying contends that, when implementing *Jaldhi*'s retroactive ruling, a District Court has the “discretion to assess equitable considerations.” Sinoying Br. at 23.

Once again, Sinoying is mistaken. *Hawknet* held, very clearly, that *Jaldhi*'s rule “has retroactive effect to all cases open on direct review.” 590 F.3d at 91. That holding correctly followed *Harper v. Virginia Department of Taxation*, in which the Supreme Court ruled that, when it applies a new rule of law to the parties before it, that new rule “is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review.” 509 U.S. at 97. The Supreme Court disapproved any limitation on retroactivity that would permit “‘the substantive law [to] shift and spring’ according to the particular

equities of [individual parties' claims] of actual reliance on an old rule and of harm from a retroactive application of the new rule.” *Id.* (alterations in original).

This Court did not—indeed, could not—deviate from this principle when it referred to the “presumption of retroactivity set forth in *Harper*.” *Hawknet*, 590 F.3d at 91 n.7. There are only very limited instances where *Harper*’s retroactivity rule may be trumped, and this is not one of them. Specifically, “as in the law of qualified immunity,” there may be “*a well-established general legal rule* that trumps the new rule of law, which general rule reflects *both* reliance interests and other significant policy justifications.” *Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749, 759 (1995) (first emphasis added). There may also be other “principle[s] of law, such as that of ‘finality’ present in the *Teague* context [*i.e.*, when a habeas petitioner seeks to apply retroactively a new rule of criminal law], that limits the principle of retroactivity itself.” *Id.*¹¹ These exceptions, by allowing uniform application in a category of

¹¹ It was to these *categories* of cases that Justice Kennedy was referring when he stated that, “in some exceptional cases, courts may shape relief in light of disruption of important reliance interests or the unfairness caused by unexpected judicial decisions.” *Id.* at 761 (Kennedy, J., concurring). Indeed, Justice Kennedy clarified that “these considerations” are taken into account in “two classes of cases”: “cases involving qualified immunity” and cases “applying the *Teague* bar.” *Id.*

cases, dovetail with *Harper*'s aversion to “selective application of new rules.” *Harper*, 509 U.S. at 97.

None of these situations is present here, which is why this Court held that *Jaldhi* applied retroactively, notwithstanding the *Hawknet* parties' “reli[ance] on *Winter Storm* . . . when structuring their transactions.” *Hawknet*, 590 F.3d at 91 n.7. *Americas Bulk Transport Ltd. v. IMT*, 2010 WL 1047674 (S.D.N.Y. Mar. 19, 2010), *appeal pending*, *Eitzen Bulk A/S v. Ashapura Minechem, Ltd.*, No. 10-976-cv (2d Cir.), simply contravenes *Hawknet* and *Harper*'s prohibition on allowing “the substantive law [to] shift and spring' according to ‘the particular equities of [individual parties'] claims' of actual reliance on an old rule and of harm from a retroactive application of the new rule.” 509 U.S. at 97 (alterations in original). Reading Justice Kennedy's concurrence out of context, the *Americas Bulk Transport* analysis of “the equities between the party claiming ownership and the party's creditor,” 2010 WL 1047674, at *1, was a quintessentially improper “selective application,” *Harper*, 509 U.S. at 97, of *Jaldhi*'s retroactivity rule.¹²

¹² Judge Sweet did not make this mistake. Judge Sweet based his assertion of jurisdiction on a pre-existing contempt sanction. *See A.P. Moller-Maersk A/S v. Ocean Express Miami*, 2010 WL 1506735, at *2 (S.D.N.Y. Apr. 14, 2010) (“Under the unique facts of this case, application of *Jaldhi* and *Hawknet* is not appropriate as vacatur of the attachment at this point would eviscerate this Court's civil contempt sanction, and reward Defendant in spite of its contempt of this Court.” (internal citation omitted)).

Nor was the result in *Americas Bulk Transport* justified by the assertion that, notwithstanding *Jaldhi*'s retroactive application, the court "plainly [had] jurisdiction to order the[] disposition" of attached EFTs held in suspense accounts. 2010 WL 1047674, at *7. *Jaldhi* ruled that "the validity of a Rule B attachment *depends entirely* on the determination that the *res* at issue is the property of the defendant *at the moment the res is attached*," 585 F.3d at 69 (emphasis added)—not what might happen afterwards. *Hawknet* reinforced this rule by stating that, because the property at issue in that appeal was not attachable, "for the District Court properly to *maintain* personal jurisdiction in this case, the Court would have to conclude that it can exercise personal jurisdiction *by some other means*." 590 F.3d at 92 (emphasis added). The District Court therefore could not maintain personal jurisdiction over the defendant by claiming it had power over the suspense account as a *res*, *see America's Bulk*, 2010 WL 1047674, at *9; Rule B attachment is a form of *quasi in rem*—not *in rem*—jurisdiction. *See Jaldhi*, 585 F.3d at 69 n.12 ("In Rule B attachment proceedings, jurisdiction is predicated on the presence within the court's territorial reach of property in which the Rule B defendant has an interest."). The suspense account had to be defendant's property for the District Court to rule on its disposition, and it was not. "No alchemy by the banks [creating suspense accounts] transformed EFTs that

cannot be attached into property of the defendants that can be attached.” *Dawn Shipping*, 2009 WL 4729878, at *1.

The plain fact is that every case where a rule is clarified and the ruling is retroactive will implicate equitable considerations. *Hawknet* determined that the banks and the transfer system had been harmed enough and, that determination having been made, *Harper* decrees the balance does not shift by picking and choosing cases to apply that decision. Sinoying’s argument contravenes settled law and should be rejected.

CONCLUSION

For the foregoing reasons, the Clearing House respectfully requests that this Court affirm the District Court’s December 15, 2009 order.

Respectfully submitted,

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ADDENDUM

APPENDIX A

In response to the Court's question at oral argument on June 23, 2010 regarding the status of maritime-attachment cases post-*Jaldhi*, *amicus curiae* respectfully submits this Appendix summarizing our research. The list of maritime-attachment cases commenced is taken from the daily list of cases filed in the Southern District of New York, published on courthousenews.com. The additional statistics are based on review of docket sheets in those cases. From January 1, 2009 to October 16, 2009 (the date *Jaldhi* was issued), there were just over 1000 cases commenced in which a Rule B maritime-attachment order was issued.

Our review of these docket sheets indicates that, of the cases that remained pending on October 16, 2009, 381 have since been closed. Of those 381 cases, 147 were dismissed, either voluntarily or by court order, after plaintiff was directed to show cause why the maritime-attachment order should not be vacated and/or the case dismissed. (Table 1, below, provides an example from each of 19 Southern District Judges whose cases have been resolved in this way.) The docket sheets for 107 of these 147 cases indicate that defendants had not appeared in the action. *See* Table 2, below.

Based on our review of docket sheets of cases filed in the Southern District since January 1, 2009, 20 cases appear to remain open. Records kept by certain Clearing House members reflect that an additional 11 cases, commenced

before January 1, 2009 (when we began tracking cases for this Appendix) are still pending. These cases are listed in Table 3, below. Other banks may have other open cases.

If the Court desires further explanation or clarification, the Clearing House would be pleased to provide it.

Table 1: Examples of Cases Dismissed, Either Voluntarily or by Court Order, After Issuance of Orders to Show Cause:

Caption	Docket	Judge
<i>Dilys Carrier Company v. Delta Maritime and Trading</i>	09 cv 5961	Baer
<i>Unicorn Successor S.A. v. Rizhao Sinoren International Trading Co. Ltd. et al</i>	09 cv 7106	Berman
<i>Florens Container Inc. v. Meridian Shipping Lines Pvt. LTD.</i>	09 cv 8378	Castel
<i>Schuyler Line Navigation Co. v. Orinoco Iron, S.C.S.</i>	09 cv 2330	Cedarbaum
<i>Onego Shipping & Chartering BV v. Ocean Bulk Carriers Corp.</i>	09 cv 8597	Chin
<i>Shinsei Kogyo Co. Ltd v. Senior Master International Ship Management Co. Ltd</i>	09 cv 7270	Cote
<i>Reiter Petroleum, Inc. v. Magic I Cruise Line Corp.</i>	09 cv 4955	Gardephe
<i>Cosmotrade Exports S.A. v. Nursan Celik Sanayi Ve Haddecilic AS et al</i>	09 cv 7550	Hellerstein
<i>Japual Oil and Maritime Services PLC v. Sarku Engineering Services SDN BHD</i>	09 cv 8481	Holwell
<i>Sea Consortium Pte Ltd. v. Great Ocean Container Line (Hong Kong) Limited</i>	09 cv 1228	Jones
<i>Korea Line Corporation v. Peninsula Enterprise, Sorrento</i>	09 cv 8198	Kaplan
<i>Poseidon Salvage Maritime Co. v. Southern Cement Company</i>	09 cv 8612	Koeltl
<i>Solym Carriers Ltd. v. Sirius Shipping Inc. et al</i>	09 cv 1050	Marrero
<i>Oldendorff Carriers GmbH & Co. KG v. Fairwind Europe Limited et al</i>	09 cv 8497	McMahon
<i>Empresa De Navegacion Maruba S.A. v. Evergreen Marine (UK) Limited</i>	09 cv 7479	Pauley
<i>Allied Maritime Inc. v. Descatrade SA</i>	09 cv 3684	Scheidlin
<i>Inchcape Shipping Services v. Eastwind Carriers (UK) Limited et al</i>	09 cv 6445	Stein
<i>Nordana Project & Chartering v. Topsheen International Logistics Co. Limited</i>	09 cv 6918	Sullivan
<i>World Wide Shipping LTD v. Opti Thermal, S.L.</i>	09 cv 1173	Swain

Table 2: Cases Dismissed, Either Voluntarily or by Court Order, Where Defendants Have Not Appeared:¹

Caption	Docket	Judge	Date of Dismissal
<i>IHC (UK) LTD. v. Jiangsu Grand Luck Chemical Minerals LTD.</i>	09 cv 8715	Berman	10/20/2009
<i>American Steamship Owners Mutual Protection and Indemnity Association, Inc v. Tianjin (Hebei) Shipping Co. Ltd. et al</i>	09 cv 7785	Berman	10/20/2009
<i>Alphamate Commodity GmbH v. Green Valley for Animal Feed Libya</i>	09 cv 7156	Cote	10/21/2009
<i>Amarante Shipping Pte Ltd. v. Kothari Products Ltd</i>	09 cv 7842	Castel	10/21/2009
<i>United Bunkering & Trading (HK) Ltd. v. Kwantas Oil SDN BDH et al</i>	09 cv 8041	Scheidlin	10/21/2009
<i>Inchcape Shipping Services v. Elegant Cruises & Tours, Inc. et al</i>	09 cv 7607	Koeltl	10/23/2009
<i>Construcciones Integrales Del Carmen, SA de CV v. OceanTeam Power & Umbilical Shipping A.S. North Ocean 2KS</i>	09 cv 8024	Castel	10/23/2009
<i>Wilhelmsen Ships Service - Egytrans v. Eastwind Carriers (UK) Limited et al</i>	09 cv 6439	Koeltl	10/23/2009
<i>Ishhar Overseas FZE v. Servo Buana Resources</i>	09 cv 8637	Sullivan	10/23/2009
<i>Hanse Shipping Corporation v. Rede Gusa Mineracoes LTDA</i>	09 cv 7513	Sullivan	10/23/2009
<i>Saint Michael Shipping Co. Ltd v. Contenemar S.A. et al</i>	09 cv 6562	Marrero	10/26/2009
<i>Keytrade AG v. Adubos Sudoeste Ltda</i>	09 cv 8158	Koeltl	10/27/2009
<i>Unicorn Successor S.A. v. Rizhao Sinoren International Trading Co. Ltd. et al</i>	09 cv 7106	Berman	10/27/2009
<i>CTC Marine Projects, LTD v. T-D Joint Venture PTY. LTD. et al</i>	09 cv 8673	Marrero	10/27/2009
<i>National Iranian Tanker Company v. Societe Anonyme Marocaine De L'Industrie Du Raffinage S.A. "SAMIR"</i>	09 cv 7278	Scheidlin	10/27/2009
<i>Nordana Project & Chartering v. Topsheen International Logistics Co. Limited</i>	09 cv 6918	Sullivan	10/27/2009

¹ Because this data is drawn from cases commenced since January 1, 2009, this list does not include other cases commenced before this date that were dismissed, either voluntarily or by court order, even though the defendant had not appeared. *See, e.g., Melco Maritime LLC v. Inter Alyans Ltd.*, No. 08 Civ. 8085 (S.D.N.Y. Feb. 11, 2010) (Preska, J.)

Caption	Docket	Judge	Date of Dismissal
<i>Klaus Eilbrecht Schiffahrts GMBH & Co KG MS 'Caribbean Sina' v. Bernuth Lines Ltd</i>	09 cv 1788	Kaplan	10/28/2009
<i>GE Seaco Srl et al v. Longkou Port Corporation Ltd. et al</i>	09 cv 8463	Gardephe	10/28/2009
<i>Handytankers K/S v. Mednavi SRL</i>	09 cv 8678	Koeltl	10/29/2009
<i>R Shipping Inc. v. Continental Sales Limited</i>	09 cv 7671	Castel	10/29/2009
<i>Minermet S.P.A. v. Comalin and Dynacome S.A.R.L.</i>	09 cv 6290	Koeltl	10/29/2009
<i>Herning Shipping A.S. v. Coindagro S.A.</i>	09 cv 7770	Sullivan	10/29/2009
<i>NB Shipping Limited v. Silverships Ltd.</i>	09 cv 7833	Swain	10/29/2009
<i>Vinalines v. Singhania and Sons Pvt. Ltd.</i>	09 cv 8449	Cote	10/30/2009
<i>Shinsei Kogyo Co. Ltd v. Senior Master International Ship Management Co. Ltd</i>	09 cv 7270	Cote	10/30/2009
<i>Macsteel International Far East Limited v. Jiangsu Feida Foreign Trade Co. Ltd.</i>	09 cv 7575	Chin	10/30/2009
<i>Onego Shipping & Chartering BV v. Ocean Bulk Carriers Corp.</i>	09 cv 8597	Chin	10/30/2009
<i>Poseidon Salvage Maritime Co. v. Southern Cement Company</i>	09 cv 8612	Koeltl	11/2/2009
<i>Vernon Business Limited v. Gran Trade Com Limited</i>	09 cv 6091	Gardephe	11/2/2009
<i>Samsun Logix Corporation v. Transasia Marine Co. Ltd.</i>	09 cv 6868	Chin	11/2/2009
<i>Golden Ocean Group Limited (Bermuda) v. G.T. Group Holding</i>	09 cv 7391	Holwell	11/2/2009
<i>Ataduru Maritime & Trading Co., Ltd v. Pol India Projects Limited</i>	09 cv 1164	Holwell	11/2/2009
<i>International Bunkering (Middle East) DMCC v. Trident Australasia FZE et al</i>	09 cv 7160	Chin	11/3/2009
<i>Dalian Ocean Shipping Company v. Glasford Shipping Ltd</i>	09 cv 7271	Gardephe	11/3/2009
<i>GE Seaco Srl v. Meridian Shipping Line Pvt. Ltd.</i>	09 cv 7674	Holwell	11/3/2009
<i>K-World Line Co., Ltd. v. JR Shipping Enterprises Limited</i>	09 cv 8747	Holwell	11/4/2009
<i>Hempel Coatings Sanayi Ve Ticaret Ltd. Sti v. Unicorn Petroleum and Chemical Trade Industry Inc. et al</i>	09 cv 5898	McMahon	11/4/2009
<i>General Shipping Services Ltd. v. RP Logistics Pvt Ltd.</i>	09 cv 6348	McMahon	11/4/2009
<i>TTMI Sarl v. Holt Global Ltd.</i>	09 cv 8370	Koeltl	11/5/2009
<i>Mktrans SDN BHD v. PT Natuna Energi Indonesia</i>	09 cv 4553	Castel	11/5/2009

Caption	Docket	Judge	Date of Dismissal
<i>Global Maritime Investments Ltd. v. Trans Pacific Carriers Co., Ltd.</i>	09 cv 6581	Swain	11/5/2009
<i>P.T. Salam Pacific Indonesia Lines v. Innogarant, LLC et al</i>	09 cv 4082	Baer	11/5/2009
<i>Transfield ER Cape Ltd. v. TMT Bulk Co., Limited</i>	09 cv 6082	Stein	11/5/2009
<i>Vinalines Shipping Company AS v. EP Carriers Pte Ltd</i>	09 cv 0201	Baer	11/5/2009
<i>Deval Denizcilik Ve Ticaret A.S. v. Commer International Limited of Varna, Bulgaria et al</i>	09 cv 5462	Koeltl	11/6/2009
<i>India Steamship (A Divn Of Chambal Fertilisers & Chemicals LTD.) v. Pontian Shipping Co. Ltd</i>	09 cv 8676	Kaplan	11/6/2009
<i>Verda Shipping Inc. v. Horn Equatorial Ltd.</i>	09 cv 6580	Chin	11/6/2009
<i>Inchcape Shipping Services v. Eastwind Carriers (UK) Limited et al</i>	09 cv 6445	Stein	11/6/2009
<i>PT Arpeni Pratama Ocean Line TBK v. Kharg Petrochemical Company</i>	09 cv 4160	Holwell	11/6/2009
<i>Devi Trading Co. Ltd. v. Silverships Ltd.</i>	09 cv 8190	Swain	11/9/2009
<i>Prosperity Cement (Asia) Limited Macao Commercial Offshore v. Cementval S.L.</i>	09 cv 7311	Baer	11/9/2009
<i>Land, Air & Sea Transport LTD. v. Indotrade Ltd et al</i>	09 cv 7789	McMahon	11/9/2009
<i>CPM Corporation Limited v. Lizi Shipping (Hong Kong) Limited</i>	09 cv 8027	Holwell	11/10/2009
<i>Florens Container Inc. v. Meridian Shipping Lines Pvt. LTD.</i>	09 cv 8378	Castel	11/11/2009
<i>P.T. Sumiden Serasi Wire Products v. Yang Chun Ocean Shipping Co. Ltd. et al</i>	09 cv 6134	Castel	11/11/2009
<i>V. Ships Monaco Sam et al v. Bodrum Maritime Inc. et al</i>	09 cv 1475	Baer	11/11/2009
<i>Geogas Trading SA v. Chaozhou Huafeng Refining Company Limited</i>	09 cv 1275	McMahon	11/11/2009
<i>Dilys Carrier Company v. Delta Maritime and Trading</i>	09 cv 5961	Baer	11/12/2009
<i>Favour Navigation Co. Ltd. v. Ocean Tankers Holdings Public Co. Ltd.</i>	09 cv 5803	Marrero	11/12/2009
<i>Sea Witch Maritime Ltd. v. Al Amal for Foreign Trade et al</i>	09 cv 2330	Cedarbaum	11/12/2009
<i>Korea Line Corporation v. Peninsula Enterprise, Sorrento</i>	09 cv 8198	Kaplan	11/13/2009
<i>Megastar Shipping Pte. Ltd. v. M.S. Overseas Transport Co. Ltd. et al</i>	09 cv 7353	Holwell	11/13/2009

Caption	Docket	Judge	Date of Dismissal
<i>Cai International, Inc. v. Shanghai International Port (Group) Co., Ltd et al</i>	09 cv 2341	Swain	11/16/2009
<i>World Wide Shipping LTD v. Opti Thermal, S.L.</i>	09 cv 1173	Swain	11/16/2009
<i>Hansa Sonderburg Shipping Corp. v. Hull and Hatch Logistics LLC</i>	09 cv 7164	Swain	11/16/2009
<i>Ceylon Shipping Corporation Ltd. v. Hydra Holdings Ltd</i>	09 cv 8638	Chin	11/16/2009
<i>GE Seaco Srl v. ONTO Shipping International Inc</i>	09 cv 4043	Koeltl	11/17/2009
<i>Dishnet Wireless (Mauritius) Ltd. et al v. Bulk Chart Ltd. et al</i>	09 cv 6806	Koeltl	11/18/2009
<i>TBS Middle East Carriers, Ltd. v. Al Muftah Ready Mix</i>	09 cv 3651	McMahon	11/18/2009
<i>Tremoil S.A. v. International Bulk Carrier et al</i>	09 cv 5224	Swain	11/19/2009
<i>Eastern Sea Navigation Company Ltd v. Shanghai Hengxin Shipping Co. Ltd</i>	09 cv 3808	Chin	11/19/2009
<i>Marinsa De Mexico S.A. De C.V. v. Condux, S.A. De C.V.</i>	09 cv 6907	Kaplan	11/24/2009
<i>Rizzo Bottiglieri De Carlini Shipping Co. SRL v. BMCC Industria E Comercio LTDA</i>	09 cv 3811	Marrero	11/25/2009
<i>Noble Chartering Inc. v. Universal Transport Ltd et al</i>	09 cv 4202	Sand	11/25/2009
<i>Reiter Petroleum, Inc. v. Magic 1 Cruise Line Corp</i>	09 cv 4955	Gardephe	11/30/2009
<i>Seal Superyachts (Maldives) Pvt. Ltd v. Raymond Limited</i>	09 cv 6468	Gardephe	11/30/2009
<i>Sinotrans Limited Project Transportation Branch v. Hong Kong Jinhai Shipping Co., Ltd. et al</i>	09 cv 8203	McMahon	12/1/2009
<i>RN Shipping AS v. Tianjin Xinhe Shipbuilding Heavy Industry Co. Ltd. et al</i>	09 cv 6601	Holwell	12/3/2009
<i>Samsun Logix Corporation v. Nonghyup Logistics Service, Inc.</i>	09 cv 0505	Holwell	12/3/2009
<i>Bunker Holdings Ltd. v. Zvezda</i>	09 cv 1875	McMahon	12/3/2009
<i>STX Pan Ocean (Hong Kong) Co., LTD. v. Refined Success Co.,Ltd et al</i>	09 cv 3785	McMahon	12/3/2009
<i>Oldendorff Carriers GmbH & Co. KG v. Fairwind Europe Limited et al</i>	09 cv 8497	McMahon	12/3/2009
<i>SRC London LLP v. Shipping Company Sea Cock Limited</i>	09 cv 1901	Griesa	12/3/2009
<i>Polsteam Shipping Company, Ltd. v. Garcia Munte Energia S.L.</i>	09 cv 4217	Gardephe	12/4/2009

Caption	Docket	Judge	Date of Dismissal
<i>Litasco SA v. Salbatring International D.O.O.</i>	09 cv 8084	Holwell	12/4/2009
<i>MS Serena Schiffahrtsgesellschaft MBH & Co. Reederei KG v. Madewell Products NIG. Ltd</i>	09 cv 4108	Holwell	12/4/2009
<i>Network Shipping Limited v. M/V Honduras Star et al</i>	09 cv 6302	Holwell	12/4/2009
<i>Clipper Bulk Shipping, N.V. v. Korea Merchant Marine Co.Ltd</i>	09 cv 5396	Chin	12/4/2009
<i>Cliff Navigation S.A. v. Viet Chan International Co. Ltd.</i>	09 cv 5072	Holwell	12/7/2009
<i>China National Chartering Co., Ltd. v. Steel Authority of India Limited</i>	09 cv 8729	Holwell	12/8/2009
<i>Morning Star Shipping Co. Ltd. v. Kysco Shipping Co., Ltd.</i>	08 cv 11298	Baer	12/8/2009
<i>Tradhol Internacional, S.A. v. Colony Sugar Mills Limited</i>	09 cv 0081	Holwell	12/8/2009
<i>All World Shipping Corp. v. Bright Shipping Co., Ltd. et al</i>	09 cv 7081	Scheindlin	12/9/2009
<i>North China Shipping Limited v. Topunited Industry Development Co. LTD</i>	09 cv 1408	Baer	12/11/2009
<i>Transcoastal Cargo & Shipping Ltd. v. Pan United Carriers Pte. Ltd et al</i>	09 cv 2252	Chin	12/15/2009
<i>Ibrahim Denizcilik VE Tic. A.S. v. Kayra Lojistik Tasimacilik San Tic. Ltd. Sti</i>	09 cv 5227	Baer	12/18/2009
<i>American Steamship Owners Mutual Protection and Indemnity Association, Inc. v. Richard Shipping Co. S.A. et al</i>	09 cv 4498	Cote	12/21/2009
<i>Transasia Marine Co. Limited v. Fairdeal Supplies Limited</i>	09 v 6408	Baer	12/21/2009
<i>Sagaan Developments and Trading Ltd. v. Baltic Sky Shipping Ltd. et al</i>	09 cv 7150	Pauley	1/15/2010
<i>Sea Consortium Pte Ltd. v. Great Ocean Container Line (Hong Kong) Limited</i>	09 cv 1228	Jones	1/26/2010
<i>HUA DAO Shipping (Far East) Ltd. v. Cheong Tai Shipping (Hong Kong) Ltd. et al</i>	09 cv 8499	Jones	1/28/2010
<i>Samho Shipping Co., Ltd. et al v. Frank Mohn A/S et al</i>	09 cv 5752	Kaplan	1/28/2010
<i>OEC Freight (NY) Inc. v. Excel Paper & Stationery Inc. et al</i>	09 cv 5550	McMahon	2/11/2010
<i>Asproyi Shipping Co. Ltd. v. Seguros Rio Guayas et al</i>	09 cv 4462	Sweet	3/8/2010
<i>Kuban 99 Syria v. Pitsburg Financial Inc.</i>	09 cv 0674	McMahon	3/25/2010

Caption	Docket	Judge	Date of Dismissal
<i>Empresa De Navegacion Maruba S.A. v. Evergreen Marine (UK) Limited</i>	09 cv 7479	Pauley	3/26/2010
<i>Baltica-Trans Ltd v. OOO Center</i>	09 cv 2560	Sand	6/2/2010

Table 3: List of Cases that Remain Pending:

Caption	Docket	Judge	Status²
<i>National Ability S.A. v. Tinna Oils & Chemicals Ltd. Et al</i>	07 cv 9913	Hellerstein	Order to show cause why attachment should not be vacated filed on November 5, 2009. No disposition reflected. Last conference scheduled for June 25, 2010
<i>Armada (Singapore) Pte. Ltd. v. Fortescue Group</i>	08 cv 10542	Baer	Court terminated Rule B Order on October 30, 2009 and ordered plaintiff to show cause in ten days why attached funds should not be released. Plaintiff letter of November 12, 2009 asked for 30 days. Court's endorsement of December 28, 2009 stated that the funds in question had been released by Judge Berman, and Judge Baer would dismiss the case on January 8, 2010 if he heard nothing further. [Last entry]
<i>Ravennavi SpA v. Projector S.A.</i>	08 cv 5997	Leisure	Court on December 10, 2009 issued order to show cause why attachment should not be vacated, funds released and action dismissed without prejudice. Plaintiff memorandum in response filed on December 29, 2009. [Last entry]
<i>Americas Bulk Transport Ltd. v. IMT</i>	08 cv 6970	Hellerstein	Discussed in appellants' and <i>amicus</i> briefs.
<i>Eitzen A/S v. Ashapura Minechem, Ltd.</i>	08 cv 8319	Hellerstein	Also discussed in the briefs. Notice of appeal filed from order denying vacatur of attachment.

² This column reflects information available on the electronic docket sheet. There may be more recent developments not yet reflected there.

Caption	Docket	Judge	Status
<i>JinYang Shipping Co. Ltd. v. Marvel International</i>	08 cv 8561	Preska	Last substantive entry: "Rule B conference" held on September 2, 2009. No record of defendant appearing.
<i>ITC Shipsholding BV v. Astivenca C.A. et al</i>	08 cv 9449	Hellerstein	Last entry: plaintiff counsel provided a status report on October 9, 2009
<i>Europa Maritime S.A. v. Manganese Trans Atlantic Corporation et al</i>	08 cv 9523	Batts	Court-endorsed letter of November 10, 2009 states that parties' agreement allows the funds to be held pending resolution of foreign litigation.
<i>PCL (Shipping) PTE LTD. v. Drey Moor Fertilizers Overseas PTE LTD</i>	09 cv 0205	Hellerstein	Motion to vacate attachment filed on December 24, 2009. Court later ordered briefing through May 7, 2010.
<i>Lilith Trading Inc. v. Virgoz Oils & Fats Pte. Ltd. et al</i>	09 cv 4750	Sweet	Process of Maritime Attachment and Garnishment entered on May 22, 2009. Supplemental order entered on June 3, 2009. No apparent action taken in light of <i>Jaldhi</i> . Pre-trial conference set for April 20, 2011.
<i>Santaflor Marine Co. Ltd v. Meridian Bulk Carriers Ltd.</i>	09 cv 5304	Hellerstein	Maritime Attachment and Garnishment issued on June 18, 2009. [Last entry]
<i>Bright Shipping Co., Ltd. v. DH Logistics Lianyungang International Co., Ltd.</i>	09 cv 5633	McKenna	Maritime Attachment and Garnishment issued on June 24, 2009. [Last entry]
<i>Van Ommersen Sweden AB v. Intermach & Co. JSC</i>	09 cv 5745	Jones	On March 16, 2010, Court issued order to show cause by March 22, 2010, why attachment should not be vacated in light of Second Circuit decision. [Last entry]
<i>Candela Shipping Company Limited v. Mowbray Shipping Limited</i>	09 cv 5810	Hellerstein	Motion to vacate attachment filed on December 23, 2009. Order denying motion to vacate filed June 28, 2010.
<i>Shams Marine Services Co. v. Swiss Alliance Trading SA et al</i>	09 cv 7320	Hellerstein	Maritime Attachment and Garnishment issued on August 24, 2009. [Last entry]
<i>Treverton v. Sparks Ocean Marine, Inc.</i>	09 cv 7447	McKenna	Maritime Attachment and Garnishment issued on August 24, 2009. [Last entry]

Caption	Docket	Judge	Status
<i>K/S Erria IDA v. Quimpac S.A.</i>	09 cv 7912	Hellerstein	Maritime Attachment and Garnishment issued on September 18, 2009. Plaintiff by letter of June 23, 2010, requests to continue attachment of \$46,179.37, arbitration is ongoing. Defendant has not appeared in SDNY. Status report due on September 20, 2010. [Last entry]
<i>The Estate of Vasilij Gerasimenko et al v. Cape Wind Trading Company et al</i>	09 cv 8067	Jones	October 8, 2009 order directs that bond be filed by defendants and attachment of funds, if any, is dissolved.
<i>Far Eastern Shipping Co., PLC v. Phoenix Group Development Limited</i>	09 cv 8452	Hellerstein	Maritime Attachment and Garnishment issued on October 14, 2009. [Last entry]
<i>Optima Chartering Ltd. v. Merchant Marine Management S.A. et al</i>	09 cv 6217	Swain	Order of September 2, 2009 that funds attached pursuant to order of attachment (\$26,160) to be wired to account of SDNY clerk. Order on consent on May 4, 2010 that those funds be transferred to attorneys for defendant.
<i>American Steamship Owners Mutual Protection and Indemnity Association, Inc. v. Transatlantic</i>	09 cv 6301	McKenna	Maritime Attachment and Garnishment issued on July 15, 2009. [Last substantive entry]
<i>Trafigura Beheer B.V. v. Scotia Wind Ltd.</i>	09 cv 7045	Hellerstein	Maritime Attachment and Garnishment issued on August 12, 2009. [Last entry]
<i>Sprinter Investments Inc. v. Pan United Shipping Ltd. et al</i>	09 cv 7154	Crotty	Maritime Attachment and Garnishment issued on various dates in August 2009. No apparent motion or order in light of <i>Jaldhi</i> , significant discovery dispute filings through June 28, 2010.
<i>Atlas Shipping A/S v. Britannia Bulk Plc London et al</i>	08 cv 8931	Leisure	Maritime Attachment and Garnishment issued on October 22, 2008. Action transferred to suspense docket on March 23, 2009. [Last entry]

Caption	Docket	Judge	Status
<i>Pearl Holdings S.A. v. Virgoz Oils & Fats Pte Ltd. et al</i>	09 cv 4751	Sweet	Complaint answered on 10/23/2009. Pretrial Conference set for 4/20/2011. [Last entry]
<i>Granite Enterprises Limited v. Virgoz Oils & Fats Pte Ltd et al</i>	09 cv 4534	Sweet	Attachment upheld in part and vacated in part per opinion of 2/11/2010.
<i>Apeejay Shipping Limited v. STX Panocean (America) Inc. et al</i>	08 cv 9217	Preska	Voluntary order staying matter pending arbitration on 12/8/2008. No entry post- <i>Jaldhi</i>
<i>Beteiligungs KG MS "Buxharmony" Verwaltungs & Bereederungs GmbH & Co. v. Maruba S.A..</i>	09 cv 3946	Stein	By endorsement and separate order in January, 2010, certain attachments vacated but not defendant's bank account at garnishee bank.
<i>Odin Pacific Maritime Ltd. v. Korea Line Corporation</i>	09 cv 0326	Sand	Court issued order to show cause on 11/24/09 why order of attachment should not be vacated, any attached funds released, and action dismissed. On 12/15/09, court granted defendant 21 days to arrange for counsel. [Last entry]
<i>Y.N. Store and Royal Bow Co., Ltd. v. Asiatic Shipping Services, Inc.</i>	07 cv 6068	Stanton	Order to show cause issued on December 1, 2009 why attachment order should not be vacated. Attachment issue and motion to recognize English judgment briefed in December, 2009. Minute entry for show cause hearing re attachment entered on 12/14/09. [Last entry]
<i>Logistica Holding Ltd. v. AL Amir Co. For Food Products et al</i>	09 cv 3762	McKenna	Maritime attachment ordered on 4/15/09, extended at plaintiff's request for 90 days on 9/8/09. [Last entry]