21-CV-0795

In The
District of Columbia Court of Appeals

The Corcoran Gallery of Art and the Trustees of the Corcoran Gallery of Art,

Appellants,

v.

Susanne Jill Petty, Trustee of the Alice C. Tyler Art Trust,

Appellee

On Appeal from the Superior Court of the District of Columbia

REPLY BRIEF OF APPELLANTS

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INTRODUCTION

Appellee Susanne Jill Petty mischaracterizes the Superior Court as having held that the judgment of the California probate court is not subject to collateral attack because personal jurisdiction had been fully and fairly litigated in the original forum. According to Petty, "the only question on appeal to this Court" "is whether the D.C. Superior Court clearly erred in holding that the question of jurisdiction had been fully and fairly litigated in the original forum." Resp. Br. 18–19. The Superior Court never so held; instead, it determined jurisdiction *de novo*. The Superior Court independently "address[ed] whether the Corcoran willingly availed itself of the jurisdiction of the California courts," JA51, and decided:

> [T]he Corcoran submitted to the jurisdiction of the California courts by failing to raise jurisdictional arguments at the June 14, 2018 probate hearing, arguing beyond the issue of jurisdiction to the merits of the petition in its Probate Motion for Reconsideration, and appealing to the California Court of Appeals on issues of both jurisdiction and the merits . . . . (JA56.)

But the Superior Court erred by inquiring into the "jurisdiction of the California courts," rather than the jurisdiction of the court that rendered the judgment (the California probate court), and by finding consent based on a combination of acts before that court and the court of appeals. Op. Br. 24–25. The Corcoran's appearance at the June probate hearing before the court's jurisdiction had even been properly invoked did not waive jurisdiction or acquiesce to the probate court's authority. The motion for reconsideration is a nullity under this

Court's full-faith-and-credit jurisprudence, and in any event cannot constitute retroactive consent to a jurisdiction already exercised (a core principle that Petty does not address). And the Corcoran's raising of both jurisdictional and merits arguments in an appeal of a default *merits* judgment is irrelevant to whether it originally consented to the probate court's jurisdiction. Without consent, the probate court's judgment cannot be recognized because it lacked jurisdiction over the Corcoran, a D.C. non-profit with no ties to California. Jurisdiction cannot rest on a single contract where the Corcoran rejected a California forum-selection clause and which the Corcoran would perform only in D.C. Even apart from the lack of jurisdiction, this Court cannot give full faith and credit to the California probate judgment as it conflicts with a *cy pres* decree of the D.C. Superior Court.

There is no question here of denying Petty her day in court. She may bring her contract action in D.C., where any dispute over the *cy pres* order can be adjudicated. But the Corcoran has been denied its day in court. This Court should reverse: The California probate court's judgment is not owed full faith and credit.

ARGUMENT

I. THE CALIFORNIA DEFAULT JUDGMENT IS NOT ENTITLED TO FULL FAITH AND CREDIT AND SHOULD NOT BE ENFORCED.

A. The Superior Court Had To Determine Jurisdiction *De Novo*.

As the Supreme Court has "consistently recognized [], 'a judgment of a court in one State is conclusive upon the merits in [another] only if the court in the

first State had power to pass on the merits—had jurisdiction, that is, to render the judgment.'" *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 704–05 (1982) (quoting *Durfee v. Duke*, 375 U.S. 106, 110 (1963)); *Nader v. Serody*, 43 A.3d 327, 334 (D.C. 2012) ("[E]xceptions to the obligation to give full faith and credit" include "lack of . . . personal jurisdiction . . . ."). As a corollary, the rendering court's jurisdictional determination must be respected when "when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided *in the court which rendered the original judgment*." *Durfee*, 375 U.S. at 111 (emphasis added); *see also Marshall v. Marshall*, 547 U.S. 293, 314 (2006).

In this case, there is not even a colorable claim that that "those questions have been fully and fairly litigated and finally decided" in the California probate court—that court entered a default judgment without any jurisdictional determination. Without any contestation over personal jurisdiction or the merits of the petition, the probate court granted relief by default simply because the Corcoran had not appeared. *See* JA159. The Corcoran asked the court to reconsider its ruling, raising jurisdiction and due process problems, but the court entered judgment without considering the motion.[1] *See* JA209 ("[F]rankly I didn't

[1] Petty faults the Corcoran for not having apprised the probate court of the motion. Resp. Br. 7. But the Corcoran properly *filed* the motion with the probate court, and Petty points to no authority permitting an additional *ex parte* notice.

even see your motion."). Thus, the California probate court did not find that the Corcoran consented to personal jurisdiction at the June 14 hearing or by the unread motion for reconsideration; rather the probate court "*assumed*" "any objections were waived to the petition . . . ." JA210 (emphasis added).

Recognizing this, the D.C. Superior Court made an independent determination of jurisdiction. JA50–56. Petty simply misreads the court as having held "that the question of jurisdiction had been fully and fairly litigated" in probate court. Resp. Br. 18; *see also id.* at vii, 19–21. The Court made no such finding, and never questioned the Corcoran's repeated objection that it was not fully heard in the probate court.[2] First, Petty points to the court's recognition that the Corcoran's counsel attended the June 2018 but not the July 2018 hearing. Resp. Br. 19. The court recounted these events to support its (erroneous) view that the Corcoran consented to personal jurisdiction, *see* JA52–53, not to conclude that the probate judgment was fully and fairly litigated. Second, Petty represents that the Superior Court rejected the Corcoran's factual claim that it was "completely ignored" in probate court, Resp. Br. 19, 21, but what the court actually said was that the failure to be heard had no bearing on jurisdiction, *see* JA52–53.

[2] In its motion for relief to the Superior Court, the Corcoran argued that default judgments are not entitled to full faith and credit because "the [foreign] court itself [did not] fully and fairly adjudicate[] the question of its own jurisdiction." *Vickery v. Garretson*, 527 A.2d 293, 299 n.4 (D.C. 1987).

Petty's brief also misunderstands the lower court's use of the California Court of Appeal decision. *See* Resp. Br. 19–20, 20 n.4. Petty argues that the Superior Court "looked to the California Court of Appeal decision to determine which issues were raised by the Corcoran *below*" in probate court. Resp. Br. 20 (emphasis added). This reading is unfounded. There was no need to infer from the California appeal what was raised in probate court because the record here contains every relevant submission to the probate court. Rather, the Superior Court relied upon the appellate decision as evidence of what the Corcoran argued *on appeal* because "the parties . . . did not provide any briefing submitted in relation to the California appeal." JA55. Inferring that the Corcoran must have argued the merits on appeal, the Superior Court found consent to jurisdiction. JA55–56. But the Corcoran's arguments on appeal are irrelevant to whether there was full and fair litigation of jurisdiction *in the probate court* that rendered the judgment.[3]

Contrary to Petty's representations, the Superior Court did not address whether a jurisdictional finding was the product of full and fair litigation in the California probate court because *it was not litigated at all.* The probate court—the court whose judgment Petty seeks to enforce—never heard a single argument from

[3] What the appellate decision does show is that the petition was never litigated in probate court. *See* JA196 ("[B]ecause Corcoran did not oppose the petition . . . Corcoran forfeited those arguments."); JA210–11 (same); JA217 ("Corcoran waived its objections to personal jurisdiction . . . .").

the Corcoran—not as to service, personal jurisdiction, or the merits. Answers to questions that were not litigated are not entitled to full faith and credit. *See Vickery*, 527 A.2d at 299 n.4 ("Had the [foreign] court itself fully and fairly adjudicated the question . . . we would be bound . . . ."). Thus, "a court asked to enforce a default judgment must entertain an attack on the jurisdiction of the court that issued the judgment." *Jerez v. Republic of Cuba*, 775 F.3d 419, 422 (D.C. Cir. 2014); *see also id.* ("[P]rinciples of res judicata . . . apply not to default judgments but only to contested cases . . . ."); *Am. Steel Bldg. Co. v. Davidson & Richardson Constr. Co.*, 847 F.2d 1519, 1521 (11th Cir. 1988). Put differently, "[b]y entering a default judgment, [the California probate court] treated the case as though [the defendant] had never appeared in the litigation . . . [so this Court shall] go on to consider whether the state exercised valid *in personam* jurisdiction over" the Corcoran. *Tom Brown & Co. v. Francis*, 608 A.2d 148, 151 (D.C. 1992).[4] The Superior Court was right to decide personal jurisdiction in the first instance, and

[4] For similar reasons, Petty's "gotcha" assertion that the Corcoran waived its jurisdictional challenge by moving to reconsider rather than moving to quash is untenable. Resp. Br. 25–27. A motion to quash service is one mechanism—not the only, *see* Cal. Prob. Code §§ 853, 11952(c)—for objecting to personal jurisdiction *before* the Court exercises jurisdiction. Even under Petty's version of events, *see* Op. Br. 10, the *earliest* the Corcoran's motion to quash would have been due was August 13, 2018. By July 30, 2018, the court had *already* granted complete relief on the merits, foreclosing any such motion. Petty does not explain how a motion to quash would have been proper given the default. *See* Op. Br. 33 n.6. The petition had been granted, so the Corcoran had no choice but to move to reconsider as it otherwise would have forfeited its merits objections. *Id.* at 10, 35.

this Court must review its determination *de novo*. *See Frank E. Basil, Inc. v. Guardino*, 424 A.2d 70, 73 (D.C. 1980); *Shanklin v. Bender*, 283 A.2d 651, 653 (D.C. 1971).[5]

B. The Corcoran Did Not Generally Appear in the Probate Court Through Counsel's Attendance at a June 14, 2018 Hearing.

No court has held that the Corcoran consented to jurisdiction simply by appearing at the June 14, 2018 probate hearing and stating that the Corcoran would prefer to file written objections, once Petty had corrected defective service of the petition. *See* JA53; JA219–20; *contra* Resp. Br. 6. Before the next hearing, the outstanding probate notes had documented Petty's failure to establish timely service, and by rule, the matter had to be continued. *See* L.A. Super. Ct. L.R. 4.4; Op. Br. 9-10. The Corcoran would have raised jurisdictional defects in written objections[6] if the court had not disregarded Rule 4.4 and improperly granted relief.

The proper way to understand counsel's statement that "we would prefer to

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[5] Contrary to Petty's claims, Resp. Br. 33 n.9, the Corcoran had no obligation to place the briefing of the court of appeals in the record since the appellate proceedings are irrelevant to the question of the Corcoran's consent to the *probate* court's jurisdiction. Even if *arguendo* Petty could seek issue preclusive effect for appellate findings, it would be Petty's burden to brief and document the elements of an issue preclusion defense. *Santa Clara Valley Trans. Auth. v. Rea*, 45 Cal. Rptr. 3d 511, 517 (Cal. Ct. App. 2006) (holding that the party asserting collateral estoppel "has the burden to prove that the doctrine applies," and denying collateral estoppel because of an incomplete record). Petty did not do so.

[6] "Any objection to jurisdiction of the court shall be made . . . in the manner prescribed" by the Probate Code and "if established, the court shall not grant the petition." *See* Cal. Prob. Code §§ 11952(c), 853; *contra* Resp. Br. 24, 25–26.

file a written objection" is in the context of the ongoing service problems. *See* JA122; JA124; JA141–42. With no duty or desire to waive its jurisdictional objections, the Corcoran never asked for *any* relief—let alone the kind "'which can only be granted upon the hypothesis that the court ha[d] jurisdiction.'" *Cal. Overseas Bank v. French Am. Banking Corp.*, 201 Cal. Rptr. 400, 403 (Cal. Ct. App. 1984). Notably, the D.C. Superior Court did not disagree; it ultimately left the question unanswered to avoid "speculation" about the nature of the Corcoran's proposed objections. JA53. But even if *arguendo* the nature of the objections was indeterminate, that would not imply the Corcoran's acquiescence to the probate court's jurisdiction. The Corcoran was entitled to raise objections to jurisdiction and the merits concurrently *after* Petty properly served the petition. *See* Op. Br. 28; Cal. Code Civ. Proc. § 418.10(e). Petty has no response to this point.

Petty's examples of general appearances are inapposite. *See, e.g.*, *Cal. Dental Ass'n v. American Dental Ass'n*, 590 P.2d 401, 404 (Cal. 1979) (defendant contested "all of the [] claims on the merits"); *City of Riverside v. Horspool*, 167 Cal. Rptr. 3d 440, 450 (Cal. Ct. App. 2014) (defendant "requested a continuance to answer the complaint"); *In re Vanessa Q.*, 114 Cal. Rptr. 3d 294, 297 (Cal Ct. App. 2010) (defendant's counsel told the court he was "'ready to proceed'" to trial). In contrast, the Corcoran asked for nothing before the probate court's order.

The Corcoran's position is strongly supported by the rule that "[a] general

appearance by a party is equivalent to personal service of summons on such party." Cal. Civ. Proc. Code § 410.50. As argued, *see* Op. Br. 28, if counsel's attendance had been a general appearance, that fact would have waived the requirement for Petty to serve the Corcoran. Yet no one understood the requirement to be waived. To the contrary, Petty requested and received a continuance at the hearing on the sole ground that Petty still needed to serve the Corcoran. JA84–85. Ergo, there was no general appearance. On this point, too, Petty has no rebuttal.

Petty twice relies on the very general language of *California Dental* that a defendant objecting to jurisdiction "must keep out for all purposes except to make that objection." 590 P.2d at 404. *California Dental* no longer applies. The quoted sentence appears in the court's application of the abandoned rule (*see* Op. Br. 33 n.6) that a defendant cannot simultaneously argue jurisdiction and merits. In the context of that rule (and that the defendant had answered every claim on the merits), the court was using other "purposes" to denote merits arguments.

The California Supreme Court's later decision in *Blank v. Kirwan* further undermines Petty's extreme view. 703 P.2d 58, 72 (Cal. 1985). The parties in *Blank* had stipulated to a deadline by which the defendant would "plead or otherwise respond" to the complaint. *Id.* at 72. This general commitment—much like the Corcoran's statement that it planned to object—did not recognize jurisdiction and was not a general appearance. The court reasoned, "[A] party . . .

who merely seeks an extension of time to plead cannot reasonably be deemed to make a general appearance. His purpose may be to obtain adequate time to determine whether or not to object to the jurisdiction of the court." *Id.* (marks omitted). At the June 2018 hearing, it was Petty, not the Corcoran, requesting continuance. *Contra* Resp. Br. 10–11. All the evidence suggests the Corcoran was determined to object to jurisdiction. *See, e.g.*, JA141–42 (letter detailing inadequate notice). Hence, there was no general appearance, and this Court must review whether the Corcoran was subject to personal jurisdiction *de novo*.

C. There Can Be No Retroactive Consent to Jurisdiction.

The court below improperly framed the issue as whether "the California *courts*," referring to both the probate court and the court of appeal, "properly exercised jurisdiction." JA53 (emphasis added); *see also* JA54; JA56. The Superior Court did not find that the Corcoran consented to jurisdiction in the probate court. *See* JA53 ("[T]o conclude so would require this Court to engage in speculation."); JA54 ("[T]his Court will give the Corcoran the benefit of the doubt as to whether the Probate Motion for Reconsideration constituted a general appearance . . . ."). Instead, it erroneously relied upon those acts in combination with the Corcoran's appeal as retroactively establishing jurisdiction. *See* JA55–56.

California has rejected the position that raising non-jurisdictional matters on appeal constitutes a general appearance. *Bank of Am. Nat. Tr. & Sav. Ass'n v.*

Carr, 292 P.2d 587, 592–93 (Cal. Ct. App. 1956). And the court below did not explain how the Corcoran's actions in the probate court—neither amounting to consent—could somehow transform into retroactive consent after appellate briefing. This was clear error: The probate court must have had personal jurisdiction over the Corcoran on the day that it declared default and ordered the delivery of the artworks and $1 million, else its order was void and unenforceable. This proposition is compelled by California law, *see* Op. Br. 29–32, and by due process, *see* Op. Br. 33–36 (collecting cases). The Corcoran's actions show that it *never* had an intent to consent to jurisdiction in California.

Petty does not defend the reasoning of the court below. The response brief devotes one paragraph to the mistaken notion that the Corcoran waived jurisdiction through its motion for reconsideration. Resp. Br. 25. But the motion, like the appeal, transpired *after* the probate court had already granted relief and could not retroactively confer jurisdiction. On this point, Petty's brief strikingly omits *In re Marriage of Smith*, which renounced the idea that "a general appearance retroactively turns an invalid service into a valid one." 185 Cal. Rptr. 411, 416 (Cal. Ct. App. 1982). After a default judgment, the defendant in *Smith* appeared in court, requested a continuance, and even took a deposition. Under California law, none of these actions cured the original defects of service because the court lacked jurisdiction to enter the order at the time it was entered. *Id.* at 414–18. By the

same logic, when consent is the predicate for jurisdiction, the court has jurisdiction only from the time consent is given. *See* Cal. Code Civ. Proc. § 410.50(a). "[F]rom the time" a California court acquires jurisdiction, *id.*, its jurisdiction "continues throughout *subsequent* proceedings in the action." *Id.* § 410.50(b) (emphasis added). As *Smith* rightly holds, this provision of California law would be "meaningless" if a general appearance operated as retroactive consent. 185 Cal. Rptr. at 418. Consequently, the Corcoran's motion (and *a fortiori* its appellate briefing) did not consent to personal jurisdiction on July 30, 2018.

None of the cases cited in Petty's brief supports the kind of retroactivity embraced by the Superior Court. First, *In re Vanessa Q.* did not involve a question of whether a subsequent general appearance could retroactively confer personal jurisdiction that was *already exercised* by the court. 114 Cal. Rptr. 3d at 299–300.[7] Likewise, *Serrano v. Stefan Merli Plastering Co.* merely described the principle that a general appearance suffices for personal jurisdiction and did not address retroactivity. 76 Cal. Rptr. 3d at 569. Finally, Petty cites *In re Marriage of Obrecht*, in which the defendant did not appear at a hearing in which spousal support payments were ordered, but did appear at a subsequent hearing to contest an order on arrearages for those payments. *Obrecht* held that the defendant waived

[7] *Vanessa Q.* refers to the dicta in the 1956 *Bank of America* case that a general appearance after entry of judgment waives jurisdiction, *id.* at 300, but as discussed above, the court of appeals directly rejected that principle in *In re Smith.*

his retroactivity argument by waiting three months and by failing to challenge the initial order in excess of jurisdiction. 199 Cal. Rptr. 3d 438, 444, 446 (Cal. Ct. App. 2016); Op. Br. 30–32. Petty does not dispute that the Corcoran followed the teaching of *Obrecht* by contesting jurisdiction immediately following the probate court's first order. *See* Op. Br. 32.

The Corcoran's motion for reconsideration was not a general appearance for a separate reason. Even assuming that Petty is right to say the motion "sought affirmative relief," Resp. Br. 25, the probate court did not treat it as a general appearance because that court never ruled on it and, in fact, had no knowledge of its existence. For this reason, the D.C. Superior Court rightly rejected the argument Petty attempts to resurrect on appeal. *See* JA54–55.

This Court's decision in *Tom Brown & Co. v. Francis* is on point. 608 A.2d at 150–51. There, a Maine court entered a default judgment despite that the defendant had filed multiple papers, including an answer to the complaint on the merits. *Id.* Asked to enforce the judgment, this Court found no waiver of jurisdiction because the first court had "refused to accept" the answer, "treat[ing] the case as though [the defendant] had never appeared in the litigation." *Id.* at 151. Therefore, this Court considered personal jurisdiction *de novo*. *Id.* at 151–52.

Petty attempts to distinguish *Tom Brown* in a footnote. Resp. Br. 25 n.6. But the principle of *Tom Brown* concerns the court's reaction to an alleged

appearance, not the form of it. Put simply: If the court refuses to consider the papers, those papers cannot be deemed a general appearance before the entry of judgment. This principle comports with the doctrine of full faith and credit, under which a foreign judgment is enforceable because the judgment debtor (in contested cases) already had "his day in court." *See, e.g.*, *Sherrer v. Sherrer*, 334 U.S. 343, 348 (1948); *Stoll v. Gottlieb*, 305 U.S. 165, 172 (1938).[8] If anything, the distinctions between *Tom Brown* and this case favor the Corcoran. Whereas Tom Brown filed an answer solely on the merits, the Corcoran challenged jurisdiction in its motion for reconsideration. And whereas Tom Brown participated in the action prior to judgment, the Corcoran's motion for reconsideration was filed only after the court had already exercised jurisdiction. If Tom Brown's merits defense was not a general appearance, then neither was the Corcoran's motion.

Finally, it would be fundamentally unfair to find that the Corcoran had consented to jurisdiction. Because Petty had failed to serve the Corcoran at least 30 days prior to the July 30, 2018 hearing, *see* JA98 (conceding that service was untimely); *contra* Resp. Br. 6, Petty had not complied with the Probate Code and had not timely resolved the court's "Matters to Clear." *See* Op. Br. 10–12. Under the rules, no hearing could occur—a fact both parties understood, *see* JA141–42

[8] Petty's other objection—that *Tom Brown* failed to apply *Durfee*, Resp. Br. 25 n.6—is conclusory and erroneous. *Durfee* applies *only* when jurisdiction was fully and fairly litigated in the rendering court, *see Marshall*, 546 U.S. at 314.

(letter to Petty's counsel explaining why Petty's service "fail[ed] to satisfy the notice requirements prior to the July 30, 2018 hearing"); JA90 (Petty's Supplement to Petition, hoping "to address the matters raised in the probate attorney's notes . . . without a further continuance"). Despite the ineffective service and notice and the failure to clear the Probate Notes, the court held a hearing anyway—flouting local rules—and granted complete relief in the Corcoran's absence. Incredibly, Petty now calls this "harmless error." Resp. Br. 32; *cf. Vanessa Q.*, 114 Cal. Rptr. 3d at 299 ("Defective service . . . is not cured by [defendant's] actual notice . . . ."). The Corcoran attempted to remedy the situation via its motion for reconsideration, but the court only compounded the harms by entering judgment without seeing, much less considering, the motion. And the final twist of the knife was the California appellate decision, which held that the Corcoran forfeited both its merits arguments (because they should have been raised before the surprise default) and its jurisdiction arguments (because the Corcoran had raised merits arguments in its motion, although they were futile after judgment). The Corcoran did not consent to a Catch-22 judicial process in which raising the jurisdictional question (after judgment was improperly entered) is deemed retroactive consent to jurisdiction.

D. The Corcoran is Not Subject to Personal Jurisdiction in California.

Because of its improper consent finding, the court below did not decide whether the California probate court could exercise personal jurisdiction over the

Corcoran. Petty does not claim that the Corcoran is subject to general jurisdiction in California, *see* Op. Br. 36, and focuses instead on specific jurisdiction. Petty "has the initial burden of demonstrating facts justifying the exercise of jurisdiction." *Pavlovich v. Superior Ct. of Santa Clara Cty.*, 58 P.3d 2, 9-10 (Cal. 2002) (quotation omitted); *Tom Brown*, 608 A.2d at 151 (assigning burden to plaintiff in review of default judgment consistent with forum law). Thus, to prevail, Petty must show (1) that the Corcoran purposefully availed itself of forum benefits, and (2) that the controversy is related to or arises out of the Corcoran's contacts with California. *Snowney v. Harrah's Entm't., Inc.*, 112 P.3d 28, 32 (Cal. 2005). Citing only the 1994 Donation Agreement, Petty fails to vindicate the California court's assumption of jurisdiction.

1. Purposeful Availment. The touchstone of specific jurisdiction is foreseeability, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980), and Petty has not shown that the Corcoran's contacts with California were more than "random, isolated, or fortuitous." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984). The Corcoran could not reasonably foresee being haled into court anywhere that any one of its donors happens to reside. The sole contact at issue is the singular donation in 1994 by the Tyler Art Trust—a trust that had no business with the Corcoran after 1994 and ceased to exist after distributing Ms. Tyler's collection. *See* JA335; JA340. Petty's statement that the Corcoran has

"interact[ed] extensively with persons in California and their associated property," Resp. Br. 28–29, is unsupported. *See W. Corp. v. Superior Ct. of San Diego Cty.*, 11 Cal. Rptr. 3d 145, 153 (Cal. Ct. App. 2004) (remote activities do not support jurisdiction unless they "form an integral part of an ongoing business relationship"). Petty stresses that the artworks were made "by a California resident-artist," Resp. Br. 28, but a third party's forum contacts are irrelevant to the "defendant-focused" inquiry. *Walden v. Fiore*, 571 U.S. 277, 284 (2014).

The Supreme Court has directly addressed a one-off contract: A "contract with an out-of-state party *alone*" "clearly . . . cannot" "automatically establish sufficient minimum contacts in the other party's home forum," even where it chooses the law of the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478, 482 (1985). The future consequences and terms of the contract must be evaluated, *id.* at 479, and here future performance was contemplated to occur strictly in D.C.: the Corcoran was to devote a permanent gallery in its D.C. museum building and display the works not less than two or three months per year. JA76. The one-time Donation Agreement in 1994 did not involve "continuing and wide-reaching contacts" with California. *Burger King*, 471 U.S. at 479–80; *see also Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516, 518 (1923).

Finally, the crossed-out forum selection clause in the Agreement is highly probative: Not only did the parties not "expect to be subject to the jurisdiction of

courts in California," *Snowney*, 112 P.3d at 41, they explicitly rejected it. JA78. Petty's theory renders meaningless this explicit and mutual act by the parties.

2. Substantial Nexus Between Controversy and Forum. There is no connection between Petty's breach of contract claim and the Corcoran's activity in California. First, "none of [the Corcoran's] challenged conduct had anything to do with [California] itself," *Walden*, 571 U.S. at 289, because the alleged breach occurred in Washington, D.C., when the Corcoran "stopped displaying the Collection," Resp. Br. 3. Second, the "claimed injury does not evince a connection between [the Corcoran] and [California]." *Walden*, 571 U.S. at 290. If Ms. Petty or the alleged trust were injured in California, it would "not [be] because anything independently occurred [in California]." *Walden*, 571 U.S. at 289–90.[9]

3. Fair Play and Substantial Justice. Additionally, "the assertion of personal jurisdiction [must] comport with fair play and substantial justice." *Snowney*, 112 P.3d at 32 (quotation omitted). Washington, D.C., is the only proper forum for this dispute. The Corcoran's "business" is profoundly local. Created by Act of Congress, the Corcoran's express purpose is to serve the D.C. community. Before this action, the D.C. Superior Court distributed the Corcoran's assets

[9] Petty cites to *Snowney*, but "in *Snowney* the plaintiff alleged defendants engaged in false advertising in California." *Simonelli v. New York Univ.*, No. A148786, 2017 WL 5712586, at *8 (Cal. Ct. App. Nov. 28, 2017) (emphasis in original). "[Petty] does not similarly claim that [the Corcoran] engaged in California-related activity that was itself wrongful." *Id.*

(primarily to D.C. institutions) in an orderly fashion after a complex trial in which the District of Columbia was a party. The D.C. Attorney General continues to oversee the distribution of the Corcoran's few remaining assets. Any possible witnesses—if this suit were ever litigated—would likely reside in the D.C. area. In contrast, the Corcoran has nothing to do with California and inflicted no injury there. No Corcoran witness or evidence exists in California. It would be unjust to force the Corcoran to submit to the jurisdiction of the California probate court.

II. THIS COURT SHOULD NOT ENFORCE THE JUDGMENT IN CONFLICT WITH THE LAWFUL D.C. *CY PRES* ORDER.

Petty's brief offers no legal analysis of the D.C. Superior Court's *Cy Pres* Order, its effect on the Corcoran's obligations, or the degree to which it conflicts with the relief granted by the California probate court. *See* Resp. Br. 33–34. The *Cy Pres* Order exhaustively determined the Corcoran's obligations with respect to its gallery assets, which was the very purpose of seeking *cy pres* relief. *See* Op. Br. 38–40. The text of the Order explicitly considered restrictions on the assets and transferred, modified, and/or extinguished the Corcoran's duties, revising *any* other instrument as needed to realize the *cy pres* relief. JA249–50; Op. Br. 40–41. Under the Order, the D.C. Attorney General exercises oversight and control, and the Corcoran is not free to remove works from D.C. *See* Op. Br. 43–45.

Petty asserts that the artworks at issue were not subject to the *cy pres* proceeding and urges this Court to adopt the California court's view of the *Cy Pres*

Order. Resp. Br. 34. Contrary to Petty's claims, the Order covered all works in the collection; accessioning or de-accessioning affects only their disposition. *See* JA297 n.30; Op. Br. 45–46.[10] Further, the Court must determine whether it is permitted to enforce the foreign judgment—a question of D.C. law that this Court is entitled to interpret *de novo*. *See* Op. Br. 38–39, 39 n.8, 47–49. The California judgment "can only be executed in [D.C.] as *its* laws may permit." *Lynde v. Lynde*, 181 U.S. 183, 187 (1901) (citation omitted; emphasis added). Answering these questions will require the Court to construe the *Cy Pres* Order. If the foreign default judgment conflicts with the *Cy Pres* Order, this Court should apply the rule that "[a] foreign judgment will not be given greater effect tha[n] a domestic judgment on the same issue." *Porter v. Porter*, 416 P.2d 564, 569 (Ariz. 1966).

CONCLUSION

This Court should reverse the judgment below.

[10] Petty also suggests that the Corcoran omitted her *ex parte* communication with Judge Okun, *contra* Op. Br. 8 n.2. Petty has never offered her own side of the exchange, so it is unknown what Petty requested of the court. Regardless, *ex parte* correspondence cannot determine the meaning of the *Cy Pres* Order.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served via the court's efiling system this 26th day of April 2022.

/s/Charles A. Patrizia
Charles A. Patrizia

April 26, 2022

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

- An individual's social-security number
- Taxpayer-identification number
- Driver's license or non-driver's' license identification card number
- Birth date
- The name of an individual known to be a minor
- Financial account numbers, except that a party or nonparty making the filing may include the following:

(1) the acronym "SS#" where the individual's social-security number would have been included;
(2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
(3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
(4) the year of the individual's birth;
(5) the minor's initials; and
(6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); see also 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

21-CV-0695

/s/ Charles A. Patrizia
Signature

April 26, 2022
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