No. 24-

IN THE

Supreme Court of the United States

CONEY ISLAND AUTO
PARTS UNLIMITED INC.,

Petitioner,

v.

JEANNE ANN BURTON,
CHAPTER 7 TRUSTEE FOR VISTA-PRO
AUTOMOTIVE, LLC

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Well-settled legal principles dictate that a judgment entered in the absence of personal jurisdiction is void. Federal Rule of Civil Procedure 60(b)(4) authorizes federal courts to vacate a judgment when it is void. A motion seeking vacatur, however, "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1).

Each of the United States Courts of Appeals other than the Sixth Circuit holds that there is effectively no time limit for moving to vacate a judgment, notwithstanding Rule 60(c)(1)'s "reasonable time" requirement, when the judgment is obtained in the absence of personal jurisdiction. The common thinking among these circuits is that a judgment entered without personal jurisdiction is void ab initio.

The United States Court of Appeals for the Sixth Circuit is the sole outlier. In this case, it held that Rule 60(c)(1) governs the timing of a motion seeking vacatur of a void judgment pursuant to Rule 60(b)(4).

The question presented is:

Whether Federal Rule of Civil Procedure 60(c)(1) imposes any time limit to set aside a void default judgment for lack of personal jurisdiction.

PARTIES TO THE PROCEEDING

Petitioner is Coney Island Auto Parts Unlimited Inc., a New York corporation.

Respondent is Jeanne Ann Burton, Chapter 7 Trustee for Vista-Pro Automotive, LLC.

RELATED PROCEEDINGS

None.

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OPINIONS BELOW

The Sixth Circuit's decision denying a rehearing en banc (Pet. App. 1a-3a) is available at 2024 U.S. App. LEXIS 22121. The Sixth Circuit's panel opinion and dissent (Pet. App. 4a-67a) is published at 109 F.4th 438. The Tennessee district court's opinion (Pet. App. 68a-78a) is available at 2023 U.S. Dist. LEXIS 160108. The Tennessee bankruptcy court's opinion (Pet. App. 79a-103a) is unavailable electronically.

The New York district court's opinion (Pet. App. 104a-133a) is available at 2022 U.S. Dist. LEXIS 73419. The New York bankruptcy court's opinion (Pet. App. 134a-149a) is unavailable electronically.

JURISDICTION

The Sixth Circuit entered its order declining en banc review on August 29, 2024. (Pet. App. 1a-3a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

INTRODUCTION

A judgment procured through defective personal service is void and a nullity. The passage of time between entry of the void judgment and the motion seeking a formal declaration that the judgment is void does not

confer validity upon that judgment. If it is void ab initio then it remains void for all time, and a motion for relief is never untimely. This has been the holding of every Circuit Court of Appeals to have examined the issue until the Sixth Circuit's decision in this case.

The panel majority decided that Rule 60(c)(1)'s "reasonable time" requirement applied to motions to vacate a judgment for lack of personal jurisdiction notwithstanding (i) its acknowledgment that such judgments are void upon entry, and (ii) the overwhelming weight of judicial and scholarly authority to the contrary. The panel's decision creates a circuit split between the Sixth Circuit and every other Court of Appeals to have examined the issue.

Because this Court has not previously had occasion to resolve this important issue, it should grant certiorari, reverse the Sixth Circuit's decision, and conclude that the passage of time cannot rehabilitate a judgment that was void upon entry.

STATEMENT OF THE CASE

In November 2014, Vista-Pro Automotive, LLC (the "Debtor") and its creditors agreed to commence a case under Chapter 11 of Title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Middle District

of Tennessee. On February 11, 2015, the Debtor commenced an adversary proceeding for unpaid invoices against petitioner Coney Island Auto Parts Unlimited Inc., a New York corporation.

According to the Certificate of Service, Debtor's counsel served the summons and complaint through regular, first class United States mail, postage fully pre-paid, addressed to:

Coney Island Auto Parts Unltd., Inc.
2317 McDonald Ave.
Brooklyn, NY 11223

Separate counsel signed Debtor's motion for default judgment, also attesting that the summons and complaint were delivered "by U.S. mail at 2317 McDonald Ave., Brooklyn, New York 11233."

Without receiving a response, on May 19, 2015, Debtor moved for judgment by default, and the bankruptcy court entered an order granting the motion. The resulting judgment was in the amount of $48,696.21, plus $7.00 per diem (the "Judgment"). In April 2016 the case was converted into a Chapter 7 liquidation proceeding and the bankruptcy court appointed a trustee, Jeanne Ann Burton. The trustee became the plaintiff for all later proceedings and is the Respondent here.

On July 22, 2020 – over five years later – the Respondent commenced a proceeding in the United States Bankruptcy Court for the Southern District of New York to register the Judgment in that court. The bankruptcy court granted the application. In early 2021, Respondent served upon Petitioner's bank an Information Subpoena with Restraining Notice pursuant to New York law. In response to the subpoena, on February 5, 2021 the bank advised Petitioner that it had placed a hold on its account in the amount of $97,392.42 (twice the amount of the Judgment).

Following unsuccessful negotiations, on October 7, 2021, Respondent moved the New York bankruptcy court to vacate the Judgment due to lack of personal jurisdiction. During the hearing, the court agreed that service seemed to be improper, but exercised its discretion and held that Respondent's recourse lies with the Tennessee bankruptcy court as a matter of comity because it entered the Judgment and the underlying bankruptcy proceeding remains open. Therefore, that court denied the motion. (Pet. App. 134a-149a). Respondent timely appealed the bankruptcy court's decision to the United States District Court for the Southern District of New York. On April 21, 2022, the district court issued an Opinion and Order affirming the bankruptcy court's order. (Pet. App. 104a-133a).

Thereafter, Respondent moved the Tennessee bankruptcy court to vacate the Judgment. On September 23, 2022, the bankruptcy court denied the motion to vacate. It found that the Sixth Circuit requires Rule 60(c)(1) vacatur motions to be made within a "reasonable time," even when the judgment is void. (Pet. App. 79a-103a). Although the bankruptcy court recognized that nearly all authorities favor the opposite conclusion, it adhered to the Sixth Circuit's minority view. (*Id.* at 94a-95a).

Respondent timely appealed the bankruptcy court's ruling to the district court. On September 8, 2023, the district court affirmed the bankruptcy court's holding. (Pet. App. 68a-78a). The district court largely agreed with the bankruptcy court that although Respondent's argument might be successful in other Circuit Courts of Appeals, it could not prevail in the Sixth Circuit. (*Id.* at 72a-74a).

Respondent then appealed to the Sixth Circuit. On July 26, 2024, the panel affirmed the district court's order in a split decision. *Burton v. Coney Island Auto Parts Unlimited, Inc. (In re Vista-Pro Auto., LLC)*, 109 F.4th 438 (6th Cir. 2024) (Pet. App. 4a-67a). The panel majority held that the Sixth Circuit's decision in *United States v. Dailide*, 316 F.3d 611 (6th Cir. 2003), was controlling precedent. 109 F.4th at 442-44. In *Dailide*, a citizenship revocation proceeding, the

Sixth Circuit held that a four-year delay between entry of summary judgment and the filing of a collateral motion attacking the district court's subject matter jurisdiction was untimely pursuant to Rule 60(c)(1). 316 F.3d at 618.

But subject matter jurisdiction differs from personal jurisdiction in that the latter implicates due process whereas the former does not. *Compare United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010) ("Federal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an arguable basis for jurisdiction.") *with World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) ("A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere."). Thus, a judgment entered in the absence of subject matter jurisdiction is only potentially voidable, whereas one entered in the absence of personal jurisdiction is void, period. Accordingly, *Dailide* is not controlling in the realm of personal jurisdiction.

The panel majority further found that although its approach differs from every other Circuit Court, its reading of Rule 60(c)(1) is more consistent with the text of the Rule and its

applicability to void judgments of any kind. *Burton*, 109 F.4th at 444 (Pet. App. 24a).

Judge David McKeague authored a forceful dissent. He observed that, for a variety of reasons, the court should not adhere to *Dailide*. 109 F.4th at 448-450 (Pet. App. 45a-52a). Moreover, the use of the term "reasonable" in Rule 60(c)(1), along with statements made by members of the Advisory Committee on Rules for Civil Procedure when it adopted the current formulation of Rule 60(c)(1), signals that it intended the "reasonable" time limit to apply to voidable judgments, not ones void ab initio. 109 F.4th at 452 (Pet. App. 60a-64a); *see also Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706 (1982) (holding that a defendant "is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding"); *Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543, 1547 (D.C. Cir. 1987) (R. Ginsburg, J.) (finding that a defendant may move to vacate a void judgment whenever "enforcement of the default judgment is attempted").

Petitioner timely requested en banc review. On August 29, 2024, the Sixth Circuit denied the petition. 2024 U.S. App. LEXIS 22121 (Pet. App. 1a-3a).

REASONS FOR GRANTING THE WRIT

I. The Circuits Are Divided Over Whether There Is Any Time Limitation On Moving To Vacate A Default Judgment For Lack Of Personal Jurisdiction

The Court should grant certiorari to resolve a widening circuit split over whether Rule 60(c)(1) imposes any time limit on motions to vacate a default judgment for lack of personal jurisdiction. Apart from the Sixth Circuit, every Court of Appeals to have addressed the issue has concluded that no such time limitation exists:

First Circuit: *Sea-Land Serv., Inc. v. Ceramica Europa II, Inc.*, 160 F.3d 849, 852 (1st Cir. 1998) ("Rule 60(b)(4) motions cannot be denied on the procedural ground that they were not brought within a 'reasonable time' as required under Rule 60(b). Although the language of Rule 60(b) literally applies even to motions alleging lack of personal jurisdiction, this court has held that motions to set aside a judgment for lack of personal jurisdiction under Rule 60(b)(4) may be made at any time.").

Second Circuit: *"R" Best Produce, Inc. v. DiSapio*, 540 F.3d 115, 123-24 (2d Cir. 2008) ("In fact, it has been oft-stated that, for all intents and purposes, a motion to vacate a default judgment as void may

be made at any time" (internal quotation marks omitted)).

Third Circuit: *United States v. One Toshiba Color Television*, 213 F.3d 147, 157 (3d Cir. 2000) (en banc) ("[N]o passage of time can transmute a nullity into a binding judgment, and hence there is no time limit for such a motion. It is true that the text of the rule dictates that the motion will be made within 'a reasonable time.' However, nearly overwhelming authority exists for the proposition that there are no time limits with regards to a challenge to a void judgment because of its status as a nullity; thus laches is no bar to recourse to Rule 60(b)(4).").

Fourth Circuit: *Garcia Fin. Group, Inc. v. Va. Accelerators Corp.*, 3 F. App'x. 86, 88 (4th Cir. 2001) ("Unlike a Rule 60(b)(1) motion, which must be brought within one year, or all other Rule 60(b) motions, which must be brought within a 'reasonable time,' a Rule 60(b)(4) motion may be brought to set aside a void judgment at any time.").

Fifth Circuit: *Norris v. Causey*, 869 F.3d 360, 365 (5th Cir. 2017) ("For starters, there is no timeliness problem with the motions seeking relief from the judgment. Because a 'void judgment cannot acquire validity' through the passage of time, Rule 60(b)(4) motions have no time limit" (quoting 11 Charles Alan Wright,

Arthur R. Miller, & Mary Kay Kane, Federal Practice & Procedure, § 2862 (3d ed.)).

Seventh Circuit: *Philos Techs., Inc. v. Philos & D, Inc.*, 645 F.3d 851, 857 (7th Cir. 2011) ("Although a defendant who asserts a jurisdictional defense in a collateral proceeding bears the burden of proving that the court lacked jurisdiction over his or her person, . . . the defendant benefits from the fact that the collateral challenge to jurisdiction can be brought at any time.").

Eighth Circuit: *Katter v. Ark. La. Gas Co.*, 765 F.2d 730, 734 (8th Cir. 1985) ("At least in the sense that it focuses simply upon the timeliness of a request for relief, . . . laches is not generally recognized as a basis for refusing relief from an invalid (void) default judgment.").

Ninth Circuit: *Million (Far East) Ltd. v. Lincoln Provisions Inc. USA*, 581 F. App'x 679, 682 (9th Cir. 2014) ("Motions to set aside a judgment as void under Rule 60(b)(4) may be brought at any time. Accordingly, the district court erred in denying the motion as untimely with respect to its request to set aside the judgment under Rule 60(b)(4).").

Tenth Circuit: *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 n.9 (10th Cir. 1979) ("Arguably, a motion to set aside a judgment for voidness under 60(b)(4) is subject to a 'reasonable' time

limitation. Indeed, the rule explicitly states that a motion made under sections other than 60(b)(1), (2) or (3) must be filed within a reasonable time. However, if a judgment is void, it is a nullity from the outset and any 60(b)(4) motion for relief is therefore filed within a reasonable time.").

Eleventh Circuit: *Hertz Corp. v. Alamo Rent-A-Car*, 16 F.3d 1126, 1130 (11th Cir. 1994) ("Rule 60(b)(4) is the appropriate vehicle by which to attack jurisdictional defects of purported judgments. According to Professors Wright and Miller, the time within which a Rule 60(b)(4) motion may be brought is not constrained by reasonableness" (internal citations omitted)).

D.C. Circuit: *Bell Helicopter Textron, Inc. v. Islamic Republic of Iran*, 734 F.3d 1175, 1180 (D.C. Cir. 2013) (rejecting plaintiff's argument that Rule 60(c)(1) applies to motions to vacate a default judgment as "contrary to this court's precedent, as well as that of almost every other circuit court of appeals, all of which reject a time limit that would bar Rule 60(b)(4) motions").

The current state of the law is untenable. Litigants contesting void judgments should not face the prospect that "[i]n some circuits, [their] position would likely prevail, but not in the Sixth Circuit." (Pet. App. 99a). This Court should grant certiorari to resolve the circuit split.

II. The Question Presented Is Recurrent And Important

Certiorari is also warranted because the question presented recurs frequently and lower courts, as well as litigants, would benefit from this Court's guidance. Indeed, a search for "60(b)(4) /200 untimely or time-barred" in the federal district courts database yields 1,024 opinions since 2005. Likewise, a search for "60(c)(1) or 'reasonable time' /200 60(b)(4)" yields 1,090 decisions since 2005 (though possibly overlapping with the foregoing search). Not all are on point, but different permutations of the same search may return even more relevant opinions. In addition, because the question presented implicates a constitutional due process concern, the Court's decision on the merits will likely affect actions in state courts whose rules of civil procedure or applicable case law mirror the Federal Rules. *See, e.g., Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80 (1988) (holding that requiring a showing of a meritorious defense to vacate a state court default judgment procured through defective service amounts to a violation of due process).

This Court's most recent applicable take on default judgments is that a defendant is "always free" to ignore a judicial proceeding and "then" attack it collaterally. *See Ins. Corp. of Ireland*, 456 U.S. at 706. The answer to the question

presented would determine when, if ever, a collateral attack on a void judgment is too late.

III. This Court Has Not Previously Ruled On The Question Presented

This Court has not previously had occasion to issue a ruling directly touching upon the question presented. However, two cases came close.

First, in *Klapprott v. United States*, 335 U.S. 601 (1949), the Court reversed the rulings of the lower courts and permitted the petitioner to move to vacate a judgment by default entered against him in a denaturalization proceeding some four years earlier. *Id.* at 609-14. In so holding, the Court noted that then-newly enacted Rule 60(b)(4) permitted courts to set aside void judgments "without regard to the limitation of a year applicable to motions to set aside on some other grounds." *Id.* at 609. However, the Court did not reach the salient issue in this case because the default judgment was entered while petitioner was in poor health and incarcerated (on charges later dismissed), and government agents had removed from him a letter he penned to the American Civil Liberties Union seeking assistance and did not mail it. *Id.* at 604-07. Thus, there was no question in that case whether petitioner had moved in "reasonable time."

Second, in *Espinosa*, the issue was whether discharge of student loan debt obtained without proper service upon the creditor was valid. 559 U.S. at 263. After the debtor filed the plan, the creditor filed a notice of claim but did not object to the plan's proposed discharge of Espinosa's student loan debt. *Id.* at 265. The bankruptcy court confirmed the plan without an adversary proceeding or a finding of undue hardship, and the creditor received notice but again failed to object. *Id.* Years later, the creditor moved to vacate the judgment pursuant to Rule 60(b)(4). This Court granted certiorari because of a split in the courts of appeals on the issue of whether discharge of student loan debt in the absence of an adversary proceeding is a jurisdictional defect. *Id.* at 268. The Court found that it is not because the requirement that an adversary proceeding be the vehicle to determine the existence of undue hardship is a "procedural rule" and "not jurisdictional." *Id.* at 272. Thus, the bankruptcy court's judgment was not void and relief pursuant to Rule 60(b)(4) was unavailable. *Id.* at 276.

Notably, in *Espinosa* the creditor argued that despite receiving a copy of the debtor's plan and submitting a proof of claim, it was not served with a summons and complaint in an adversary proceeding and so had no obligation to object to the plan. *Id.* at 275. The Court was not convinced, holding that "Rule 60(b)(4) does not provide a license for litigants to sleep on their

rights," and by receiving the plan and filing a proof of claim the creditor had submitted itself to the bankruptcy court's jurisdiction. *Id.* That language – in isolation – seems to apply to the procedural setting here. But the Court itself limited the language to situations where "a party is notified of a plan's contents and fails to object to confirmation of the plan before the time for appeal expires, that party has been afforded a full and fair opportunity to litigate, and the party[] fail[s] to avail itself of that opportunity[.]" *Id.* at 276. The Court made no pronouncement about void judgments.

Still, even after *Espinosa*, several Courts of Appeals maintain that there is no time limit on filing a Rule 60(b)(4) motion. *See Bell Helicopter*, *Million (Far East)*, *Philos Techs.*, *Norris*, *supra* (each decided after *Espinosa*). So there is substantial ambiguity regarding when – if ever – a litigant may be precluded from challenging a void judgment on timeliness grounds. The Court should grant certiorari to answer this important question.

CONCLUSION

Petitioner respectfully requests that the Court issue a writ of certiorari to the Sixth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX

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APPENDIX A

No. 23-5881

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: VISTA-PRO AUTOMOTIVE, LLC,

Debtor.

JEANNE ANN BURTON, CHAPTER 7 TRUSTEE FOR VISTA-PRO AUTOMOTIVE, LLC,

Plaintiff-Appellee,

v.

CONEY ISLAND AUTO PARTS UNLIMITED, INC.,

Defendant-Appellant.

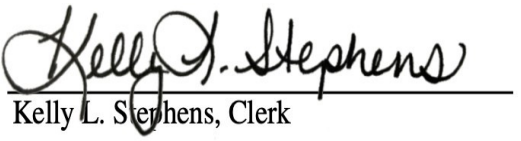
ORDER

BEFORE: BOGGS, McKEAGUE, and LARSEN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied. Judge McKeague would grant rehearing for the reasons stated in his dissent.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Filed: August 29, 2024

Mr. Daniel Ginzburg
The Ginzburg Law Firm, P.C.
200 Village Center Drive Unit 7045
Freehold, NJ 07728

Re: Case No. 23-5881, *In re: Coney Island Auto Parts Unltd v. Vista-Pro Automotive, LLC*
Originating Case No.: 3:22-cv-00804: 3:14-bk-09118: 3:15-ap-90079

Dear Mr. Ginzburg,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Mr. Phillip Gary Young Jr.

APPENDIX B

No. 23-5881

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: VISTA-PRO AUTOMOTIVE, LLC, Debtor.	
JEANNE ANN BURTON, CHAPTER 7 TRUSTEE FOR VISTA-PRO AUTOMOTIVE, LLC, Plaintiff-Appellee, v. CONEY ISLAND AUTO PARTS UNLIMITED, INC., Defendant-Appellant.	No. 23-5881

Appeal from the United States District Court for the Middle District of Tennessee at Nashville.

No. 3:22-cv-00804—Waverly D. Crenshaw Jr., District Judge.

United States Bankruptcy Court for the Middle District of Tennessee at Nashville.
Nos. 3:14-bk-09118; 3:15-ap-90079—Randal S. Mashburn, Bankruptcy Judge.

Decided and Filed: July 26, 2024

Before: BOGGS, McKEAGUE, and LARSEN, Circuit Judges.

COUNSEL

ON BRIEF: Daniel Ginzburg, THE GINZBURG LAW FIRM, P.C., Freehold, New Jersey, for Appellant. Phillip G. Young, Jr., THOMPSON BURTON PLLC, Franklin, Tennessee, for Appellee.

LARSEN, J., delivered the opinion of the court in which BOGGS, J., joined. McKEAGUE, J. (pp. 11–20), delivered a separate dissenting opinion.

OPINION

LARSEN, Circuit Judge. Vista-Pro Automotive, LLC, entered bankruptcy proceedings in 2014 and, in an adversary proceeding, filed a complaint against Coney Island Auto Parts Unlimited, Inc., to recover on unpaid invoices. Coney Island never responded, so the bankruptcy court entered a default judgement against it. Years later, Coney Island moved to vacate the default judgment as void. The bankruptcy court and the district court denied Coney Island's motion as untimely. We AFFIRM.

I.

In November 2014, creditors of Vista-Pro, a Nashville auto-parts corporation, commenced

involuntary Chapter 7 liquidation proceedings in the bankruptcy court for the Middle District of Tennessee. The parties subsequently agreed to convert the litigation into Chapter 11 restructuring proceedings.

In February 2015, Vista-Pro opened an adversary proceeding against Coney Island, a New York corporation, seeking to collect about $50,000 in unpaid invoices. Vista-Pro mailed a summons and complaint to Coney Island at its McDonald Avenue address in Brooklyn. The summons and complaint were addressed to "Coney Island Auto Parts Unltd., Inc.," without any corporate officer's or other individual's name on the mailing. According to New York Department of State records, the corporation

itself, rather than an individual, was listed as the registered agent for service of process. Coney Island did not respond, so, at Vista-Pro's request, the clerk of the bankruptcy court entered a default in April 2015.

Vista-Pro then moved for a default judgment and mailed notice of the motion and relevant materials to Coney Island's McDonald Avenue address. Again, Vista-Pro did not identify any individual on the mailing. In May 2015, the bankruptcy court entered a default judgment against Coney Island.

On motion of Vista-Pro's creditors, the court reconverted the proceedings into a Chapter 7 liquidation and appointed a trustee. In April 2016, the trustee sent a demand letter to Coney

Island to arrange satisfaction of the May 2015 default judgment. The letter was addressed to Daniel Beyda, whom the trustee had identified as Coney Island's CEO. Coney Island concedes that it received this letter.

The trustee continued efforts to collect on the judgment over the next several years. In February 2021, after registering Vista-Pro's default judgment in New York, the trustee served a subpoena on Coney Island's New York bank, which placed a $97,000 hold on Coney Island's account.

In October 2021, Coney Island moved in the Southern District of New York bankruptcy court to vacate the default judgment entered by the Middle District of Tennessee bankruptcy court.

The court denied that motion, instructing Coney Island that it should seek relief from the Middle District of Tennessee court. Coney Island did so in July 2022, moving under Federal Rule of Civil Procedure 60(b)(4) to vacate the May 2015 default judgment. *See* Fed. R. Bankr. P. 9024 (making Fed. R. Civ. P. 60 applicable in bankruptcy proceedings). Coney Island argued that the default judgment was void because Vista-Pro failed to properly serve it in the adversary proceeding and, thus, the bankruptcy court never acquired personal jurisdiction over it. Bankruptcy Rule 7004(b)(3) allows service on a corporation to be accomplished "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any

other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). But Vista-Pro simply addressed its mailed summons and complaint to "Coney Island Auto Parts Unltd., Inc." And, Coney Island argued, the trustee could not invoke laches or any other equitable defense because, in its view, there is no time limit for filing a motion to vacate a void judgment.

The bankruptcy court denied the Rule 60(b)(4) motion. Under Sixth Circuit precedent, it explained, "courts retain discretion to deny motions to set aside even potentially void judgments when, as a threshold matter, the motions are not made within a reasonable time." Order, D. 60 in No. 15-ap-90079, p. 5. Coney

Island admitted that it had actual notice of the default judgment no later than April 2016, and, in the court's view, Coney Island's years-long delay in moving to vacate the judgment was unreasonable. The district court affirmed on appeal, concluding that the "delay [wa]s unreasonable" and that Coney Island "offer[ed] nothing to justify the delay." Order, R. 18, PageID 693. Coney Island timely appealed.

II.

Coney Island says that the courts below erred by denying its motion to vacate as untimely. In its view, a motion to vacate a void judgment brought under Federal Rule of Civil Procedure 60(b)(4) is subject to no time limit at all.

Rule 60(b) provides that, "[o]n motion and just terms, [a] court may relieve a party or its legal representative from a final judgment, order, or proceeding" for five specified reasons or for "any other reason that justifies relief." Fed. R. Civ. P. 60(b). One enumerated ground for which relief is authorized is that "the judgment is void." Fed. R. Civ. P. 60(b)(4). A judgment is void if it "is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010).

Rule 60(c)(1) governs the time for filing a motion under Rule 60(b). Such motions "must be made within a reasonable time—and for reasons

(1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). Rule 60(c)(1) speaks in plain terms: "All" Rule 60(b) motions "must be filed 'within a reasonable time.'" *Kemp v. United States*, 596 U.S. 528, 533 (2022) (quoting Fed. R. Civ. P. 60(c)(1)). "But for some"—namely, motions brought under Rule 60(b)(1), (2) or (3)—"that 'reasonable time' may not exceed one year." *Id.* Coney Island brought its motion under Rule 60(b)(4), so the text says that its motion had to be filed within a "reasonable time," though not necessarily within one year of judgment.

This court's precedent comports with the text. *United States v. Dailide* concerned a challenge to a court order revoking Dailide's

citizenship. 316 F.3d 611, 614 (6th Cir. 2003). Dailide moved to vacate the judgment under Rule 60(b)(4) on the ground that the district court had entered the citizenship-revocation order without subject-matter jurisdiction. *Id.* at 617. The district court rejected the challenge, and we affirmed. We explained that a Rule 60(b)(4) motion "is only cognizable if brought within a reasonable time." *Id.* And we concluded that Dailide's four-year delay in bringing the motion was not reasonable; so "his prayer for relief [wa]s untimely." *Id.* at 618. We then proceeded to hold, in the alternative, that the motion failed on its merits because the district court did have jurisdiction to enter the revocation order. *See id.* at 618–19. And we summed up our opinion by

explaining that our decision rested on both grounds: "Dailide's attack on the subject-matter jurisdiction of the federal judiciary" to revoke his citizenship "was untimely *and* lacks merit." *Id.* at 619 (emphasis added).

Dailide presents a classic example of alternative holdings: although either the timeliness determination or the jurisdictional determination presented a sufficient ground on which to rest the decision, *Dailide* chose to give "two independent reasons for the ruling." *Wright v. Spaulding*, 939 F.3d 695, 701 (6th Cir. 2019); *see also Woods v. Interstate Realty Co.*, 337 U.S. 535, 537 (1949) ("[W]here a decision rests on two or more grounds, none can be relegated to the category of obiter dictum."). Each of these

independent reasons "contribute[d] to the judgment," and *Dailide* "actively applied the conclusion" on each issue to the case at hand. *Wright*, 939 F.3d at 701. First, *Dailide* announced the timeliness requirement and held that Dailide's four-year delay failed that rule, and second, *Dailide* analyzed the statutory jurisdiction of the district court and held that the court had possessed jurisdiction to enter the citizenship-revocation judgment against Dailide. The timeliness determination and the jurisdictional determination are both holdings of *Dailide*.

The dissent contends that *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105 (6th Cir. 1995), conflicts with *Dailide* and that *Antoine* controls because it

was decided first. *See Salmi v. Sec'y of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir.1985); Dissenting Op. at 15. We see no conflict. *Antoine* did not hold that a court may never deny a Rule 60(b)(4) motion on timeliness grounds. It did not even address timeliness. Although one can use the dates referenced in *Antoine*'s statement of facts to detect a five-year filing delay, the court made no mention of delay, and there is no reason to believe that any party raised a timeliness objection to the Rule 60(b)(4) motion brought there. *See Antoine*, 66 F.3d at 107–09. So the fact that *Antoine* proceeded to the merits—and determined that the judgment was not void, *id.* at 109—doesn't tell us anything about what a court faced with a timeliness objection must or may do.

To form a holding, "it must be clear that the court considered the issue and consciously reached a conclusion about it." *Wright*, 939 F.3d at 702. *Antoine* did not consider the timeliness of the motion before it, so it hardly could have declared all timeliness objections out of bounds. *See Antoine*, 66 F.3d at 108–09.

In similar fashion, the dissent claims that the Supreme Court's subsequent decision in *Espinosa*, 559 U.S. at 271, "confirms that untimeliness alone cannot be the basis for denying" a Rule 60(b)(4) motion. Dissenting Op. at 15–16. But, like *Antoine*, *Espinosa* did not consider whether the motion was timely under Rule 60(c)(1); it simply decided what kinds of defects make a judgment void within the meaning

of Rule 60(b)(4). *Espinosa*, 559 U.S. at 271–72. So *Espinosa* does not abrogate our caselaw on timeliness either. Contrary to the dissent's suggestion, *Northridge Church v. Charter Township of Plymouth*, 647 F.3d 606, 611 (6th Cir. 2011), does not say otherwise. See Dissenting Op. at 16. That case, too, did not address the timeliness question.[1]

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[1] We are puzzled by the dissent's characterization of *Klapprott v. United States*, 335 U.S. 601 (1949), as "explicitly assum[ing] that no 'definite time limit' applied to Rule 60(b)(4) motions." Dissenting Op. at 19. No opinion garnered a majority in that case, and the "definite time limit" language comes from Justice Reed's dissent. 335 U.S. at 624. Justice Reed seems to have been referencing Justice Black's opinion, joined by Justice Douglas, which stated that Rule 60(b) "authorizes a court to set aside 'a void judgment' without regard to the limitation of a year applicable to motions to set aside on some other grounds." *Id.* at 609. That statement is entirely consistent with the plain meaning of the Rule that we applied in *Dailide*, and it does not imply that the indefinite "reasonable time" limit does not apply.

Coney Island and the dissent next contend that *Dailide* is distinguishable because it concerned a judgment alleged to be void for lack of subject-matter jurisdiction. Here, by contrast, the source of the alleged defect is personal jurisdiction. That matters, in Coney Island's view, because a judgment "entered without personal jurisdiction . . . implicates due process." Appellant Br. at 9–10; see also Dissenting Op. at 16–17. This argument fails to persuade. To be clear, Coney Island does not mount a constitutional attack on Rule 60. It argues only that we should confine *Dailide*'s exposition of the Rule to judgments void for lack of subject-matter jurisdiction. But Rule 60 speaks to "void" judgments generally, and so it cannot bear a construction that would cleave off

some void judgments, while leaving the rest. That is answer enough. In any event, a judgment is not more void for lack of personal jurisdiction than for lack of subject-matter jurisdiction. If a court lacks either form of jurisdiction, it is "powerless to proceed to an adjudication." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (citation omitted); *see Steel Co. v. Citizens for a Better Envt.*, 523 U.S. 83, 94–95 (1998). Of course, the "character" of these "jurisdictional bedrocks unquestionably differs": the requirement of jurisdiction over the subject matter is "nonwaivable and delimits federal-court power," while the requirement of jurisdiction over the person is "waivable and protect[s] individual rights." *Ruhrgas*, 526 U.S. at 583. But that hardly

makes a judgment obtained without personal jurisdiction more void than one obtained without subject-matter jurisdiction. There is no carve-out from *Dailide*'s holding for attacks based on an alleged defect in personal jurisdiction. *See also Days Inn Worldwide, Inc. v. Patel*, 445 F.3d 899, 905–06 (6th Cir. 2006).

We are bound by *Dailide*'s holding that Rule 60(b)(4) motions are subject to a reasonable-time limitation. *See Salmi*, 774 F.2d at 689. And we have no occasion here to question the district court's application of this rule. Coney Island's sole argument on appeal is that Rule 60(c)(1)'s reasonable-time requirement does not apply; it does not argue, alternatively, that, if the rule applied, its delay was reasonable. We therefore

affirm the denial of Coney Island's motion to vacate the May 2015 default judgment.

III.

We acknowledge that our circuit appears to be out of step with the majority view, which holds that Rule 60(b)(4) motions may be brought at any time. *See, e.g., United States v. One Toshiba Color Television*, 213 F.3d 147, 157 (3d Cir. 2000) (en banc) (collecting cases); *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661–62 (1st Cir. 1990). We must follow our own circuit precedent regardless.

Our precedent is also not without virtue. First, ours is the only reading that is faithful to the text of Rule 60(c)(1), which by its plain terms imposes a reasonable-time requirement on each of

the enumerated grounds in Rule 60(b). *See Kemp*, 596 U.S. at 533 ("All [Rule 60(b) motions] must be filed 'within a reasonable time.'"); *One Toshiba*, 213 F.3d at 157 (acknowledging that "the text of the rule dictates that the motion will be made within 'a reasonable time,'" but rejecting that interpretation because of contrary out-of-circuit authority). Rule 60(c)(1) even provides a special one-year time limit for grounds (1), (2), and (3), demonstrating that the drafters were deliberate in framing the Rule's limitations and knew how to establish different standards for the various grounds. But they provided no special rule for motions brought under ground (4). If the drafters of the rule meant that a district court may never dismiss a Rule 60(b)(4) motion as untimely, then

commanding that such motions "must be made within a reasonable time" was an odd way to express it.

The text's lack of a special time provision for void judgments appears particularly significant because, in 1946, when Rule 60 was amended to its present substantive form, there was a well-established rule that void judgments could be vacated at any time. *See, e.g., Pollitz v. Wabash R. Co.*, 180 F. 950, 951 (C.C.S.D.N.Y. 1910); *Woods Bros. Construction Co. v. Yankton County*, 54 F.2d 304, 309 (8th Cir. 1931); James W. Moore & Elizabeth B. A. Rogers, Federal Relief from Civil Judgments, 55 Yale L.J. 623, 692 (1946). Whatever the merits of that traditional rule, we can assume the Rules Committee's

familiarity with it. *See* 3 Proceedings of the Advisory Committee on Rules for Civil Procedure, Mar. 25–28, 1946, at 555 (noting this rule). To accommodate this rule, the Committee could have treated void judgments differently; but Rule 60 makes no exception for them. *See id.* at 610–15 (discussing and adopting language requiring "that all motions should be made within a reasonable time"); Note, Relief from Civil Judgments, 61 Yale L.J. 76, 81 n.24 (1952) (observing that amended Rule 60's application of a reasonable-time requirement for motions to vacate void judgments was "anomalous").

Second, applying a reasonable-time limitation to Rule 60(b)(4) motions comports with basic equitable principles. *Cf. Assmann v.*

Fleming, 159 F.2d 332, 336 (8th Cir. 1947) ("[A] motion to vacate a judgment is . . . a legal remedy . . . ; yet the relief is equitable in character and must be administered upon equitable principles."). And we are not the first to leave at least some place for equitable considerations in reviewing challenges to allegedly void judgments. The Second Circuit held, for example, that a Rule 60(b)(4) motion was properly denied as untimely where the movant could have raised its jurisdictional challenge in its prior Rule 60(b) motion. *State Street Bank and Tr. Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 179 (2d Cir. 2004). *See also Katter v. Ark. La. Gas Co.*, 765 F.2d 730, 734–35 (8th Cir. 1985) (estoppel); Restatement (Second) of Judgments §

66 (Am. L. Inst. 1982) (estoppel); *Beller & Keller v. Tyler*, 120 F.3d 21, 23–24 (2d Cir. 1997) (in dictum, waiver and unreasonable delay); *cf. Jackson v. FIE Corp.*, 302 F.3d 515, 523 (5th Cir. 2002) (suggesting that delay may warrant denial of a Rule 60(b)(4) motion in "extraordinary circumstances"); *Days Inn*, 445 F.3d at 905–06. Coney Island's position—that there is no time limit for filing a Rule 60(b)(4) motion—would permit a party to engage in flagrantly inequitable conduct—for instance by consciously sleeping on its rights in order to cause prejudice to the judgment holder, undermine the finality of long-forgotten judgments, or upset reliance interests. It is not clear why Rule 60 should be given an atextual meaning to permit such results.

Of course, a void judgment is exceptional: it is premised on a fundamental "jurisdictional error" or on "a violation of due process that deprives a party of notice or the opportunity to be heard." *Espinosa*, 559 U.S. at 271. Acknowledging this, however, does not tell us what to do about a void judgment. We might think that the fundamental infirmity of a void judgment is grave enough to outweigh many other considerations. But the text of Rule 60 evinces a belief that, in some circumstances, a court may reasonably decide that a motion to vacate has come too late. Our precedent simply gives effect to the concern for timeliness embodied in the language of Rule 60. The Rules Committee could have decided, and yet may still decide, that motions to vacate void

judgments should be subject to no time constraints at all. But whatever the pull of the "ancient lore and mystery" predating Rule 60, see Dissenting Op. at 8, we cannot find such a judgment reflected in the current text of the Rule or in our precedent.

Finally, nothing about our interpretation of Rule 60 requires unfairness to a party who is subject to a void judgment. The Rule's reasonable-time limitation anticipates a fact-specific inquiry that can account for a variety of circumstances, including a party's innocent delay in learning of a void judgment against it or in learning why the judgment is void. Although the one-year limit for grounds (1), (2), and (3) runs from "the entry of the judgment or order or the date of the

proceeding," Fed. R. Civ. P. 60(c)(1), the "reasonable time" clock governing grounds (4), (5), and (6) generally "begins ticking when the movant is or should be aware of the factual basis for the motion," *Ghaleb v. Am. Steamship Co.*, 770 F. App'x 249, 249 (6th Cir. 2019). And what constitutes a "reasonable time" for purposes of Rule 60 "ordinarily depends on the facts of a given case including the length and circumstances of the delay, the prejudice to the opposing party by reason of the delay, and the circumstances compelling equitable relief." *Olle v. Henry Case & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990); *see, e.g., Blue Diamond Coal Co. v. Trs. of UMWA Combined Benefits Fund*, 249 F.3d 519, 528–29 (6th Cir. 2001) (taking into account reliance

interests, changes in decisional law, and the passage of time in ruling on a Rule 60(b) motion); *General Medicine, P.C. v. Horizon/CMS Health Care Corp.*, 475 F. App'x 65, 76 (6th Cir. 2012) (considering the unexplained delay between the movant's "notice" of a judgment and its filing of a Rule 60(b) motion). So any notice concerns that arise in the context of void judgments can be properly accounted for in the reasonable-time calculation.

One wrinkle on this last point is worth mentioning. The Supreme Court has stated that a defendant who doubts a court's jurisdiction has an "election" to make. *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525 (1931). The defendant may "submit[] to the jurisdiction of

the court for the limited purpose of challenging jurisdiction," and in so doing "agree[] to abide by that court's determination on the issue of jurisdiction," subject to any appeal. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706 (1982). Alternatively, the defendant "is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding." *Id.* Depending on the scope and basis of this procedural principle, it may limit some applications of a reasonable-time requirement for Rule 60(b)(4) motions. One court has held, in fact, that a defaulting defendant "may assert his jurisdictional objection" "[w]hen enforcement of

the default judgment is attempted." *Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543, 1547 (D.C. Cir. 1987) (R. Ginsburg, J.) (emphasis added); *see also Philos Techs., Inc. v. Philos & D, Inc.*, 645 F.3d 851, 855–57 (7th Cir. 2011). If this understanding is right, then perhaps the reasonable-time clock does not start running until enforcement is first attempted. But we need not decide this question. Coney Island has not argued that it brought its Rule 60(b)(4) motion within a reasonable time under any understanding of that standard, so we have no occasion to consider these issues here.

* * *

We AFFIRM.

DISSENT

McKEAGUE, Circuit Judge, dissenting. In late 2014, a Nashville auto-parts corporation in financial straits entered bankruptcy proceedings. To recoup as much of its debt as possible, the corporation—Vista-Pro Automotive—sought to collect payment on unpaid invoices from a number of other businesses. One of those businesses was Coney Island Auto Parts Unlimited. In an adversary proceeding, Vista-Pro filed a complaint seeking to collect nearly fifty thousand dollars from Coney Island. Vista-Pro did so without ensuring that it had properly served Coney Island with notice of the lawsuit. The bankruptcy court entered a default judgment

against Coney Island, and Vista-Pro—later, its successor-in-interest, the Chapter 7 trustee—has attempted to reap the benefits of that improper judgment for more than nine years.

I would hold that Coney Island is not categorically barred solely on timeliness grounds from filing a Rule 60(b)(4) motion for relief from final judgment. I believe we are not bound by the timeliness rule announced in *United States v. Dailide*, 316 F.3d 611 (6th Cir. 2003). And regardless of whether we are bound, I firmly believe this Court should renounce that rule and join every other federal circuit in holding that the mere passage of time cannot render a void judgment valid. The majority's holding deepens a circuit split that places the Sixth Circuit against

the weight of every other federal court in the country. Courts have no power to enforce void judgments. Because the record before us—as assumed by the bankruptcy court below—shows the judgment to be void on its face, I would vacate the bankruptcy court's determination that Coney Island's motion was untimely and remand for the court to consider whether the judgment was, in fact, void.

I.

I note briefly that much of my reasoning here rests on the somewhat unique findings that the bankruptcy court made below. The bankruptcy court declined to address the jurisdictional issues that the parties raised and denied Coney Island's motion solely on the ground

that the motion was untimely. Majority Op. at 3–4. The court declined to address the trustee's three other arguments. Indeed, it assumed—at least for the purpose of deciding the timeliness question—that service was deficient. It also accepted Coney Island's concession that it knew of the judgment by, at the latest, April 2016—roughly one year after the judgment was entered. But it did not rule on the trustee's arguments that service was valid and that Coney Island never suffered a denial of due process that would render the judgment void. The court found that "even when potentially void judgments are at issue," it retained its discretion to deny a motion to vacate the judgments when the motion is not "made within a reasonable time." Order Den. Mot. to

Vacate, Bankr. D.60 at 1, 5.[1] It declined to inquire into whether the underlying judgment was void, voidable, or valid.

II.

In my view, the bankruptcy court erred by resting its denial of Coney Island's Rule 60(b)(4) motion solely on timeliness grounds. As support for its order, the bankruptcy court cited our decisions in *United States v. Dailide*, *Days Inn Worldwide, Inc. v. Patel*, *Eglinton v. Loyer (In re G.A.D., Inc.)*, and *Blachy v. Butcher* for the proposition that time limitations apply to motions to vacate void judgments under Rule 60(b)(4). *See*

[1] Citations to bankruptcy court documents—docket number 15-ap-90079 in the U.S. Bankruptcy Court for the Middle District of Tennessee—appear as "Bankr. D."

Order Den. Mot. to Vacate, Bankr. D.60 at 5; *see also Dailide*, 316 F.3d 611 (6th Cir. 2003); *Days Inn*, 445 F.3d 899 (6th Cir. 2006); *In re G.A.D.*, 340 F.3d 331 (6th Cir. 2003); *Blachy*, 129 F. App'x 173 (6th Cir. 2005). The court felt that these precedents establish a threshold timeliness rule even after noting that several other circuits "have declined to find that the timeliness requirement applies to Rule 60(b)(4) for void judgments." Order Den. Mot. to Vacate, Bankr. D.60 at 6. Because Coney Island had "presented the timeliness issue in its purest form" and had not presented any justification showing it was entitled to equitable relief, the court found the motion had not been filed within a reasonable time under Rule 60(c)(1). It declined to vacate the

default judgment. Id. at 7–8. The court was wrong to do so.

A.

Principles of due process require that parties to a lawsuit be properly served for a court to have jurisdiction to adjudicate the parties' rights. *O.J. Distrib., Inc. v. Hornell Brewing Co.*, 340 F.3d 345, 353 (6th Cir. 2003), *abrogated on other grounds by Morgan v. Sundance, Inc.*, 596 U.S. 411 (2022). Indeed, before "a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied." *Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987). Without proper jurisdiction over the parties, a judgment is void under Rule 60(b)(4).

Antoine v. Atlas Turner, Inc., 66 F.3d 105, 108 (6th Cir. 1995) (citing *In re Edwards*, 962 F.2d 641, 644 (7th Cir. 1992)). Because a court lacks the power to enforce a void judgment, "overwhelming authority exists for the proposition that there are no time limits with regards to a challenge to a void judgment." *United States v. One Toshiba Color Television*, 213 F.3d 147, 157 (3d Cir. 2000) (en banc). Because a void judgment is a "nullity," the argument goes, the passage of time cannot render it valid. *Id.*

Courts widely agree that the timeliness requirement in the text of Rule 60(c)(1) does not apply to a motion seeking vacatur of an allegedly void judgment for the simple fact that a legal nullity must necessarily be vulnerable to vacatur

at any time. *See* 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2862 (3d ed. June 2024 update) ("[T]here is no time limit on an attack on a judgment as void."); *see also, e.g., Norris v. Causey*, 869 F.3d 360, 365 (5th Cir. 2017); *Philos Techs., Inc. v. Philos & D, Inc.*, 645 F.3d 851, 857 (7th Cir. 2011); *Sea-Land Serv., Inc. v. Ceramica Europa II, Inc.*, 160 F.3d 849, 852 (1st Cir. 1998); *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987); *Misco Leasing, Inc. v. Vaughn*, 450 F.2d 257, 260 (10th Cir. 1971); *Crosby v. Bradstreet Co.*, 312 F.2d 483, 484–85 (2d Cir. 1963); *Austin v. Smith*, 312 F.2d 337, 343 (D.C. Cir. 1962). What's more, the Supreme Court has several times appeared to assume that a defendant to a suit is "always" permitted to

choose between, on one hand, ignoring judicial proceedings, risking default judgment, and then later collaterally challenging the court's jurisdiction, and, on the other hand, submitting to a court for a jurisdictional determination and being bound by that determination. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706 (1982); *see also Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U.S. 522, 525 (1931). In short, until today, federal courts have long agreed that untimeliness alone cannot defeat a motion to vacate a void judgment.

1. No caselaw establishes a binding rule that courts may deny motions to vacate default judgments solely on timeliness grounds.

As a threshold matter, I believe we are not bound by *Dailide*, *Days Inn*, and *In re G.A.D.*

because these cases do not hold that untimeliness alone can defeat a motion to vacate an otherwise void judgment. That's true for two primary reasons: (1) none of these cases establishes a binding rule of law stating that untimeliness alone is sufficient to deny a motion to vacate, and (2) none of these cases applies the timeliness rule to a motion alleging severe due process violations striking at the heart of the court's authority to exercise personal jurisdiction over a defendant.

To be sure, language in these cases points at such a rule. And we are generally bound by prior published panel decisions; this panel may not overrule another panel. *See* 6 Cir. R. 32.1(b); *United States v. Ferguson*, 868 F.3d 514, 515 (6th Cir. 2017). But we are not bound by language in a

judicial opinion that—though presented as an alternative, independent holding—fails to apply the rule it purports to lay out. *See Wright v. Spaulding*, 939 F.3d 695, 701–02 (6th Cir. 2019). And because prior panels are also bound by existing published circuit precedent, when one "opinion of this court conflicts with an earlier precedent, we are bound by the earliest case." *Habich v. City of Dearborn*, 331 F.3d 524, 530 n.2 (6th Cir. 2003); *see also White v. Columbus Metro. Hous. Auth.*, 429 F.3d 232, 241 (6th Cir. 2005). Finally, intervening Supreme Court precedent relevant to the question before us permits us to revisit findings made by earlier panels. *See Ne. Ohio Coal. for the Homeless v. Husted*, 831 F.3d 686, 720–21 (6th Cir. 2016). Intervening

precedent here—specifically, *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010)—clarifies what kinds of judgments are void and when Rule 60(b)(4) applies. *See also Ne. Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580, 601 (6th Cir. 2012).

To the extent that *Dailide* purports to establish a general rule about untimely motions to vacate, it does not actually apply that rule. Indeed, the *Dailide* panel "actively applied," *see Wright*, 939 F.3d at 701 (emphasis omitted), an earlier rule from an earlier case by explicitly reaching the question of whether the underlying judgment was void. *Dailide*, 316 F.3d at 618–19; *see also Antoine*, 66 F.3d at 110 (remanding to consider whether the movant had proper notice of

the pending default judgment). The panel failed to apply the rule it purportedly announced. *See Wright*, 939 F.3d at 701–02. Just because "a court presents a statement as an alternative holding does not necessarily mean that the statement is entitled to adherence as binding precedent." *Freed v. Thomas*, 976 F.3d 729, 738 (6th Cir. 2020). The fact that *Dailide* failed to apply the broad timeliness rule that it laid out provides the strongest evidence that the "rule" is no rule at all.

Antoine v. Atlas Turner, Inc., published roughly eight years prior to *Dailide*, instead provides the proper governing rule. *Antoine* directly addressed the threshold voidness Rule 60(b)(4) inquiry even where the movant had waited more than five years to seek vacatur of the

judgment. *Antoine* held that if an underlying judgment is void, it would be a per se abuse of discretion for a district court to deny a motion to vacate that judgment. 66 F.3d at 108 (citing for support *Indoor Cultivation Equipment*, 55 F.3d at 1317). *Antoine* then applied that rule, remanding to the district court to determine whether the movant had received actual notice of the default judgments prior to the court entering them. *Id.* at 109–10. *Antoine* emphasized that a judgment is "void under 60(b)(4) 'if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.'" *Id.* at 108 (quoting *In re Edwards*, 962 F.2d at 644). The *Dailide* panel could not, per *Antoine*, affirm denial of a Rule

60(b)(4) motion without any assessment of whether the underlying judgment was void, voidable, or valid. So that's exactly what *Dailide* did, and that's the only holding that should bind us. Per *Antoine*, the bankruptcy court here should have resolved the question of whether the underlying judgment was void, voidable, or valid.

Later precedent confirms that untimeliness alone cannot be the basis for denying a motion to vacate a void judgment. In *Espinosa*, the Supreme Court explained that "Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." 559 U.S. at 271 (citing with approval, among others, 11

Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice & Procedure* § 2862 (2d ed. 1995 & Supp. 2009), which affirms that there is no time limit on motions to vacate void judgments).

Coney Island alleges the exact kind of error that falls into these narrow categories. If there were any doubt about the continuing validity of *Dailide*'s holding, *Espinosa*—and a later Sixth Circuit opinion, *Northridge Church*, clarifying *Espinosa*'s effect on the interpretation of Rule 60—underscores that it does not control here. See *Northridge Church v. Charter Twp. of Plymouth*, 647 F.3d 606, 611 (6th Cir. 2011).

2. No caselaw addresses whether a court may deny a motion to vacate where the judgment is void from its entry for lack of personal jurisdiction.

Dailide, *Days Inn*, and *In re G.A.D.* also do not apply to the facts of this case. Specifically, no case addresses the question of whether a federal court may deny a motion to vacate where the court declines to determine whether the judgment was void at its entry for a lack of personal jurisdiction. In this case, the bankruptcy court left unresolved the question of whether the judgment was void because service was deficient and whether the court lacked personal jurisdiction over Coney Island. *See Omni Cap. Int'l*, 484 U.S. at 104; *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999); *Antoine*, 66 F.3d at 108. *Dailide* and *In re G.A.D.* instead involved

subject-matter jurisdiction; *Days Inn* found that the court possessed personal jurisdiction over the defendant, even though not all key procedural requirements were satisfied.

The distinction is key, for personal jurisdiction is an "essential element" of a court's jurisdiction, "without which the court is 'powerless to proceed to an adjudication.'" *Ruhrgas*, 526 U.S. at 584 (quoting *Emps. Reinsurance Corp. v. Bryant*, 299 U.S. 374, 382 (1937)). The requirement that courts possess personal jurisdiction over the parties whose rights are being adjudicated represents a "restriction on judicial power" and is framed as a "matter of individual liberty." *Ins. Corp. of Ireland*, 456 U.S. at 702. The Supreme Court has

been quick to correct any notion that personal-jurisdiction requirements are in any way less important than subject-matter jurisdiction restrictions. *See Ruhrgas*, 526 U.S. at 584. Indeed, in many cases, an "impediment to subject-matter jurisdiction" might rest "on statutory interpretation, not constitutional command." *Id.* The personal-jurisdiction limitation, however, typically reflects fundamental constitutional principles of due process. *Id.* Like most individual rights, a court's lack of personal jurisdiction can be waived, but necessary to that waiver is the party's express or implied consent—implied through proper compliance with due-process notice requirements—to the court's jurisdiction. *See Ins. Corp. of Ireland*, 456 U.S. at 703;

Espinosa, 559 U.S. at 271. And before "a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied." *Omni Cap. Int'l*, 484 U.S. at 104; *see also Espinosa*, 559 U.S. at 271 (clarifying that Rule 60(b)(4) applies where a judgment is premised on either a jurisdictional error or a due-process violation). The personal-jurisdiction requirement is rooted in fundamental due-process principles, ensuring that parties to a suit are legitimately subject to a court's lawful authority before the court adjudicates their rights. *See Ruhrgas*, 526 U.S. at 584.

Both *Dailide* and *In re G.A.D.* concerned determinations of a court's subject-matter jurisdiction. Neither purported to apply any

timeliness bar to a motion challenging a court's personal jurisdiction; *In re G.A.D.* applied no timeliness threshold at all. *See Dailide*, 316 F.3d at 617–19; *In re G.A.D.*, 340 F.3d 334–37. In contrast, *Days Inn* did address personal jurisdiction. But in that case we found that "substantial compliance" with a state summons statute, paired with counsel's concession at oral argument that the defendant had received proper service two days prior to the entry of default judgment, served as "a sufficient indication" of the party's "acceptance of proper service" in that case "so as to confer personal jurisdiction on the district court." *Days Inn*, 445 F.3d at 904–05. In other words, we found the court possessed personal jurisdiction prior to the default

judgment—squarely at odds with the facts of this case. Here, the questions of (1) whether service was deficient and (2) whether Coney Island lacked all notice of the pending default judgment are unresolved. So *Dailide*, *In re G.A.D.*, and *Days Inn* do not govern the outcome here.

Of the precedent before us, *Antoine* most closely governs. In that case, we remanded to the district court for a determination of whether the defendant had received actual notice of the default judgments prior to their entry. *See Antoine*, 66 F.3d at 110. I would follow *Antoine*'s lead. On the record before us, we know only that Coney Island stipulated to actual notice a year after the date of the judgment. So I would remand for the bankruptcy court to determine whether

Coney Island actually received notice—or whether service was sufficient—such that the judgment was not void. *Antoine* governs. *Dailide*, *Days Inn*, and *In re G.A.D.* do not.

B.

I believe the cases on which the trustee and the majority rely do not bind us here. But regardless of the precedential landscape before us, I think the unbounded timeliness rule laid out in *Dailide* and adopted by the majority here is misguided. Every other federal court to address this issue has come to the opposite conclusion that the majority does here: each has held that a court may not deny a Rule 60(b)(4) motion to vacate a judgment solely because the motion is untimely.

As the majority notes, one reading of Rule 60(c)(1)'s timeliness requirement supports the conclusion that the requirement applies to motions under Rule 60(b)(4). See Fed. R. Civ. P. 60(c)(1) ("A motion under Rule 60(b) must be made within a reasonable time . . . ."). But since the rule's most recent substantive amendment, federal courts have long understood it to reflect a history of equity "shrouded in ancient lore and mystery" that suggests courts must possess the authority, regardless of a motion's timeliness, to vacate a wholly void judgment. *See* Fed. R. Civ. P. 60(b) advisory committee's note to 1946 amendment. Indeed, as the majority opinion notes, "when Rule 60 was amended to its present substantive form, there was a well-established

rule that void judgments could be vacated at any time." Majority Op. at 8.

In the majority's eyes, the firmly settled existence of that rule matters not. In its reading, Rule 60(c)(1)'s failure to describe that rule in the text of Rule 60 constitutes a rejection of the rule. But the use of the word "reasonable" in the text of Rule 60(c)(1) is itself strong evidence that the Advisory Committee did not intend to upend the traditional rule. As applied to facially void judgments, a "reasonable" time limit might very well be no time limit at all. Instead, a "reasonable" time limit might apply to voidable judgments, or to judgments that are, on their face, valid. The text of Rule 60(c)(1) supports either interpretation. The Committee affirmed

numerous times that its construction of Rule 60 was not intended to take away preexisting remedies. *See* 3 Proceedings of the Advisory Committee on Rules for Civil Procedure, Mar. 25–28, 1946, at 616 (statement of Hon. George Donworth) ("I don't think any of us would vote for anything which we thought would take away any present remedy."); *see also id.* at 615 (statement of Robert D. Dodge). Because the Committee explicitly incorporated traditional equitable principles into Rule 60, I believe the more likely meaning is that the rule permits attack on facially void judgments at any time.

What's more, the Supreme Court seems to agree. At the time of the amendment, the Court—like the Advisory Committee—understood the

rule to be more permissive than the requirements for the "old common law writs." *Klapprott v. United States*, 335 U.S. 601, 614–15 (1949). In *Klapprott*, the Court explicitly assumed that no "definite time limit," *id.* at 624 (Reed, J., dissenting), applied to Rule 60(b)(4) motions. The Court proceeded instead to determine the merits of whether the judgment at issue was in fact void under Rule 60(b)(4). Id. at 609–13. Further, more recent Supreme Court precedent suggests that the Court understands Rule 60(b)(4) to permit attack of void judgments at any time. *See Espinosa*, 559 U.S. at 271 (citing approvingly several sources, including *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661–62 (1st Cir. 1990) and 11 Charles A. Wright & Arthur R.

Miller, *Federal Practice & Procedure* § 2862 (2d ed. 1995 & Supp. 2009), that restate the traditional rule that void judgments are always susceptible to vacatur). And since Rule 60's amendment, other federal courts have reaffirmed many times the simple principle that "the mere passage of time cannot convert an absolutely void judgment into a valid one." *Jackson v. FIE Corp.*, 302 F.3d 515, 523 (5th Cir. 2002); *see also Precision Etchings & Findings, Inc. v. LGP Gem, Ltd.*, 953 F.3d 21, 23 (1st Cir. 1992) ("A default judgment entered by a court which lacks jurisdiction over the person of the defendant is void and may be set aside at any time pursuant to Fed. R. Civ. P. 60(b)(4)." (citation omitted)). Given the truism that a "void judgment is a legal

nullity," *Espinosa*, 559 U.S. at 270, it seems clear that—to avoid the injustice inherent in enforcement of a legal nullity—Rule 60(c)(1) must not permit courts to deny motions to vacate void judgments solely on timeliness grounds.

If the judgment here was in fact entered without valid service or sufficient notice to Coney Island, then it was entered with a "total want of jurisdiction." *Id.* at 271 (cleaned up) (quoting *Boch Oldsmobile, Inc.*, 909 F.2d at 661). Such a judgment is void, a legal nullity, and unenforceable. Indeed, as the New York bankruptcy court noted, service here seems facially deficient per the text of the bankruptcy rule. *See* Fed. R. Bankr. P. 7004(b)(3) (permitting service upon a corporation by mail addressed "to

the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process"). If true, allowing such a judgment to stand flies in the face of longstanding principles of equity and due process.

* * *

Before exercising power over the parties to a legal action, a court must abide by certain restraints on its authority to adjudicate individuals' rights. Subject-matter and personal jurisdiction limitations act to protect individual liberty, uphold faith in the rule of law, and bolster the legitimacy of a judiciary that wields otherwise significant power. Those fundamental limitations manifest the deep responsibility that courts have

to administer justice fairly and dispassionately. Enforcement of a legal nullity is a true injustice. Where a judgment is void, it cannot stand.

I respectfully dissent.

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CONEY ISLAND AUTO PARTS UNLIMITED, INC., Appellant, v. VISTA-PRO AUTOMOTIVE, LLC, Appellee.	No. 3:22-cv-804

MEMORANDUM OPINION AND ORDER

About seven years ago in 2015, the Bankruptcy Court in the Middle District of Tennessee granted default judgment against Coney Island Auto Parts Unlimited, Inc. ("Coney Island"). In 2021, six years later, Coney Island

moved to vacate that default judgment in the United States District Court for the Southern District of New York because the default judgment was void for lack of personal jurisdiction over Coney Island. When the Southern District of New York declined to vacate the default judgment, Coney Island returned to the Bankruptcy Court seeking the same relief on the same grounds. The Bankruptcy Court denied the motion from which Coney Island now appeals. This Court has jurisdiction under 28 U.S.C. § 158(a)(1).

The Bankruptcy Court's factual findings are not clearly erroneous and its conclusions of law, upon *de novo* review, are correct. The Bankruptcy Court's analysis properly begins with

Federal Rule of Civil Procedure 60(b)(4) because Coney Island contends the default judgment is "void" for lack of personal jurisdiction. Coney Island has the burden to establish that its motion to vacate the default judgment was filed "within a reasonable time." Fed. R. Civ. P. 60(c)(1). The Bankruptcy Court correctly explained that,

> The Sixth Circuit routinely recognizes and enforces the requirement in Rule 60(c)(1) that motions under Rule 60(b) be made within a reasonable time, even when a movant seeks relief from a void judgment. *See, e.g.*, [United States v Dailide, 316 F.3d 611, 617-18 (6th Cir. 2003)] (noting prior holdings that delays of three years and five years were unreasonable, and finding that the four-year delay in challenging subject matter jurisdiction in the case before it was unreasonable, especially considering that movant could have filed the Rule 60(b)(4) motion simultaneously with its appeal);

> Days Inns Worldwide, Inc., v Patel, 445 F.3d 899, 906 (6th Cir. 2006) (affirming lower court's finding that Rule 60(b)(4) challenge based on alleged lack of personal jurisdiction was untimely after eleven months and noting that movant "[did] not attempt to identify any good reason" for the delay); Eglinton v Loyer (In re G.A.D., Inc.), 340 F.3d 331, 334 (6th Cir. 2003) (Stating that Rule 60(b)(4) motions must be made within a "reasonable time," and noting that the challenge to the lower court's subject matter jurisdiction was untimely when the party was aware of the circumstance for the challenge, but did not file her motion within the 10-day time limit for appeal); Blachy v Butcher, 129 F. App'x 173, 179 (6th Cir. 2005) (noting that Rule 60(b)(4) challenges to an issuing court's jurisdiction must be filed "within a reasonable time," and holding that three years between entry of judgment and filing of motion was an "unreasonable delay").

(Doc. No. 1-2 at 5).

After recognizing that other circuits have not applied the reasonable time limitation to Rule 60(b)(4) motions, again the Bankruptcy Court correctly concluded that unlike other Circuit Courts of Appeal, the Sixth Circuit has applied time limitations. Indeed, other courts in the Sixth Circuit have recognized and applied this distinction. This Court cannot improve on the Bankruptcy Court's discussion:

> Judge Michelson in the Eastern District of Michigan was likewise faced with the fact that several commentators and other circuits differ with the Sixth Circuit approach:
>
> The court recognizes that there is authority to the contrary. For instance, the oft-cited Wright & Miller treatise states, "the requirement that the motion be made within a 'reasonable time,' which seems literally to apply to

motions under Rule 60(b)(4), cannot be enforced with regard to this class of motion. A void judgment cannot acquire validity because of laches on the part of the judgment debtor." Mary Kay Kane, 11 Fed. Prac. & Proc. Civ. § 2862 (3d ed.). Many of the federal appellate courts have followed this reasoning. [citations omitted.]

But this Court is bound by Sixth Circuit authority. And "[t]he Sixth Circuit has held in various cases that periods of anywhere between three and five years between the judgment and the filing of a 60(b)(4) motion were too long to permit the filing of such a motion for relief from judgment." Williams-El v Bouchard, No. 05-CV-70616, 2016 U.S. Dist. LEXIS 60735, at *4 (E.D. Mich. May 9, 2016) (citing Dailide, 316 F.3d at 617).

Willie McCormick and Assocs., Inc. v Lakeshore Engineering Servs Inc., 2022 WL 4104013 at *4 (E.D. Mich. Sept. 8, 2022).

As Judge Michelson noted, lower courts in this circuit are bound by

> the approach mandated by the Sixth Circuit Court of Appeals – regardless of what commentators and other circuits may say. The same is true in this case.

(Doc. No. 1-2 at 7). Thus, the Bankruptcy Court correctly came to the conclusion dictated by published Sixth Circuit decisions. The Bankruptcy Court wrote:

> Coney Island has instead taken the unyielding position that timing is totally irrelevant and that there is no amount of time that could lapse that would render a motion to vacate a void judgment untimely. In some circuits, that position would likely prevail, but not in the Sixth Circuit.
>
> Based on Coney Island's long, unexcused delay, which is not outweighed by any showing of a lack of prejudice to the Trustee or other equitable concerns, the Court finds that the motion to set aside the default judgment was not filed within a reasonable amount of time.

> Even if Coney Island can succeed in showing that the judgment is otherwise void due to improper service, its request to set aside the judgment must be denied based solely on the timeliness problem.

(Id. at 8). So, given the above, the Court turns to what remains in this appeal.

Coney Island argues that the Bankruptcy Court committed an error of law because no Sixth Circuit case has applied the Rule 60(b)(4) reasonable time standard when personal jurisdiction is absent. Days Inn Worldwide v Patel, 445 F.3d 899 (6th Cir. 2006) is not controlling, says Coney Island, because there the Court actually had personal jurisdiction over the defendant and the defendant simply waited too long after personal jurisdiction attached to move to vacate. Similarly Coney Island dismisses

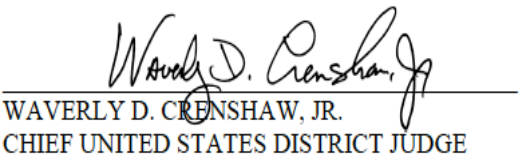
United States v Dailide, 316 F. 3d 611 (6th Cir. 2003) because that case had to do with subject matter jurisdiction not personal jurisdiction. This same rationale, it says, applies to Blachy v Butcher, 129 Fed. App'x 173 (6th Cir. 2005) and Eglinton v Loyer (In re G.A.D., Inc.), 340 F. 3d 331 (6th Cir. 2003). Coney Island's dissection of published Sixth Circuit authority misses the point. In each case the Sixth Circuit applied the reasonable time standard to determine the timeliness of a Rule 60(b)(4) motion to vacate an order that the movant argued was void. Whether the movant contends that the order was void for lack of subject matter jurisdiction, personal jurisdiction or any other basis, matters not at all to whether the motion was filed within a

reasonable time. The textual framework of Rule 60(b)(4) does not depend upon why the order is void. And there is nothing in Rule 60(b)(4) that alters the reasonable time standard based upon why the order is void. To the contrary, the reasonable time standard "is dependent upon the facts in a case, including length and circumstances of delay in filing, prejudice to opposing party by reason of the delay, and circumstances warranting equitable relief." In re G.A.D., 340 F.3d at 334 (citing Olle v Henry & Wright Corp., 910 F.2d 357, 365 (6th Cir. 1990)).

In this appeal the delay is unreasonable and Coney Island offers nothing to justify the delay. The Bankruptcy Court's findings are correct and its conclusions of law are grounded in Sixth

Circuit binding precedent. Its decision is **AFFIRMED**.

IT IS SO ORDERED.



WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Randal S. Mashburn
U.S. Bankruptcy Judge

Dated: 9/23/2022

APPENDIX D

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE

IN RE: Vista-Pro Automotive, LLC, Debtor	Case No. 3:14-bk-09118

VISTA-PRO AUTOMOTIVE, LLC, Plaintiff, v. CONEY ISLAND AUTO PARTS UNLIMITED, INC., Defendant.	Adv. Proc. No. 3:15-ap-90079

ORDER AND MEMORANDUM OPINION DENYING MOTION TO VACATE DEFAULT JUDGMENT

The Court has been asked to set aside a seven-year-old default judgment that has been fully satisfied through the collection efforts of a Chapter 7 Trustee. The defendant, Coney Island Auto Parts Unlimited, Inc. ("Coney Island") argues that the timeliness of its effort to set aside the judgment is irrelevant because the judgment is void due to improper service. However, applicable caselaw in the Sixth Circuit indicates that timeliness is a threshold matter even when potentially void judgments are at issue. Because Coney Island did not move for relief within a reasonable time, its motion must be denied.

There are several disputed issues that have been raised as a result of the effort to set aside the judgment. For example, there is disagreement

about whether service of process was, in fact, deficient. Further, the parties differ about the legal implications of a defendant's actual knowledge of a lawsuit even when service is defective. However, it is unnecessary to rule on any of these other matters, since the untimely nature of the motion requires denial based on binding Sixth Circuit law.

The Court conducted a hearing on September 20, 2022, at which time numerous exhibits were admitted that presented what is essentially an undisputed factual history. The timeline and basic events are generally stipulated even though there is strong disagreement about how the law should be applied to those facts. The biggest disagreement relates to whether the Sixth

Circuit has adopted a different approach from several other circuits which have held that timeliness is not a factor in setting aside a void judgment.

Background

A detailed timeline of key events and notice to Coney Island is reflected in an attached Addendum, but only a few critical dates are really controlling. This adversary proceeding started in a Chapter 11 case that was later converted to Chapter 7. A lawsuit over an account receivable was initiated by the debtor in possession on February 11, 2015, and collection of the judgment was later pursued by the Chapter 7 Trustee.

Service of the summons was attempted on February 23, 2015. It is undisputed that the

summons and complaint were mailed to Coney Island's correct address, but the certificate of service did not identify an officer or individual agent that was served. While there is a dispute about the effectiveness of service, the Court assumes for the purposes of this opinion that the service was deficient.[1]

No answer was filed, and a default judgment was issued against Coney Island for

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[1] Fed. R. Bankr. P. 7004(b)(3) allows service upon a corporation by first-class mail "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment of or by law to receive service of process." Since no person was identified by either title or name in the return of service, it appears on its face that the service was defective. In view of its ruling on timelines, the Court is not deciding a separate side issue that relates to the effect of how Coney Island filled out a form with the New York Department of State reflecting the address for service of process. The Trustee contends that this document at Exhibit 1001 allowed service of the complaint in the manner it was done.

$48,696.21 on May 19, 2015. Various collection efforts were pursued by the Trustee in 2016 and then again in 2018, and it is stipulated by Coney Island that it was on notice of the existence of the judgment no later than April of 2016. Despite that notice, Coney Island made no effort to vacate the judgment until approximately October 2021 when it filed a motion to vacate in a bankruptcy court in New York, after having been advised that the Trustee had taken action to tie up one of Coney Island's bank accounts.[2] Coney Island was unsuccessful in the bankruptcy court in New York and a subsequent appeal to the district court,

[2] The record reflects that the New York court conducted a hearing on the motion on October 7, 2021, but it does not accurately reflect when the motion was filed. Coney Island's brief and supporting declaration refer to the motion filing date as October 7, 2021.

because those courts found that any effort to vacate the judgment should be made in this Court since this is the Court that granted the judgment.

The motion to set aside the judgment was not filed in this Court until July 8, 2022, which was more than seven years after the judgment was entered and more than six years after Coney Island acknowledges that it was on notice of the judgment. The initial effort in New York to set aside the Tennessee judgment was not made until more than five years after Coney Island stipulates to notice of the judgment. In short, an absolute minimum of at least five years lapsed from Coney Island learning of the default judgment to when it took any steps in any court to vacate the default judgment.

Legal Analysis

Fed. R. Civ. P. 55, made applicable to adversary proceedings by Fed. R. Bankr. P. 7055, governs default procedures, including seeking relief from a default judgment. Once a default judgment becomes final, Rule 55 requires that one of the standards for relief from a final judgment under Fed. R. Civ. P. 60(b) be met. Fed. R. Civ. P. 55(c). If Rule 60(b) is satisfied, the court must also consider whether there is "good cause" under Rule 55 for setting aside the judgment.[3] However, if the Rule 60(b) standard cannot be satisfied, the Court

[3] The "good cause" standard requires analysis of three equitable factors: "(1) whether culpable conduct of the defendant led to the default, (2) whether the defendant has a meritorious defense, and (3) whether the plaintiff will be prejudiced." *Burrell v. Henderson*, 434 F.3d 826, 831–32 (6th Cir. 2006) (quoting *Waifersong, Ltd. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir.1992)).

need not address the lesser standard of good cause. Burrell, 434 F.3d at 832, 834. When the Rule 60(b) standard is applied to default judgments, the court should resolve all factual doubts in defendant's favor as a way of balancing the public policy favoring the finality of judgments with the competing policy consideration that values disposition of cases on the merits. *Id.* at 832.

Rule 60(b) provides that "[o]n motion and just terms," a court may relieve a party from a final judgment for six enumerated reasons. Fed. R. Civ. P. 60(b). Subsection (4) allows for relief when "the judgment is void." *Id.* at 60(b)(4). Rule 60 requires that any such motion be made "within a reasonable time." Fed. R. Civ. P. 60(c)(1). The

Rule sets an outside time limit of one year for motions under subsections (1) – (3), but motions under subsections (4) – (6) are only limited by the "reasonable time" requirement.

Coney Island has moved for relief under Rule 60(b)(4), arguing that it was not properly served with process of the summons and complaint, and thus the default judgment is void. "[W]ithout proper service of process, consent, waiver, or forfeiture, a court may not exercise personal jurisdiction over a named defendant." *King v. Taylor*, 694 F.3d 650, 655 (6th Cir. 2012) (citations omitted). "[I]n the absence of personal jurisdiction, a federal court is 'powerless to proceed to an adjudication.'" *Id.* (citations omitted). Any judgment rendered by a court

lacking personal jurisdiction over the defendant is void. *Bank One of Cleveland, N.A. v. Abbe*, 916 F.2d 1067, 1081 (6th Cir. 1990). When confronted with a motion to vacate a void judgment under Rule 60(b)(4), the Sixth Circuit holds that "it is a per se abuse of discretion" for the court to deny the motion. *Northridge Church v. Charter Twp. of Plymouth*, 647 F.3d 606, 611 (6th Cir. 2011).

However, despite the broad language in the cases cited above, the Sixth Circuit also holds that a Rule 60(b)(4) challenge "is only cognizable if brought within a reasonable time." *United States v. Dailide*, 316 F.3d 611, 617–18 (6th Cir. 2003). In the Sixth Circuit, courts retain discretion to deny motions to set aside even potentially void

judgments when, as a threshold matter, the motions are not made within a reasonable time.

The Sixth Circuit routinely recognizes and enforces the requirement in Rule 60(c)(1) that motions under Rule 60(b) be made within a reasonable time, even when a movant seeks relief from a void judgment. *See, e.g., id.* (noting prior holdings that delays of three years and five years were unreasonable, and finding that the four-year delay in challenging subject matter jurisdiction in the case before it was unreasonable, especially considering that movant could have filed the Rule 60(b)(4) motion simultaneously with its appeal); *Days Inns Worldwide, Inc. v. Patel*, 445 F.3d 899, 906 (6th Cir. 2006) (affirming lower court's finding that Rule 60(b)(4) challenge based on

alleged lack of personal jurisdiction was untimely after eleven months and noting that movant "[did] not attempt to identify any good reason" for the delay); *Eglinton v. Loyer (In re G.A.D., Inc.)*, 340 F.3d 331, 334 (6th Cir. 2003) (Stating that Rule 60(b)(4) motions must be made within a "reasonable time," and noting that the challenge to the lower court's subject matter jurisdiction was untimely when the party was aware of the circumstance for the challenge, but did not file her motion within the 10-day time limit for appeal); *Blachy v. Butcher*, 129 F. App'x 173, 179 (6th Cir. 2005) (noting that Rule 60(b)(4) challenges to an issuing court's jurisdiction must be filed "within a reasonable time," and holding that three years

between entry of judgment and filing of motion was an "unreasonable delay").

At least when personal jurisdiction is challenged, the timeliness requirement might also be viewed in terms of waiver. "The requirement that a court have personal jurisdiction is a due process right that may be waived either explicitly or implicitly." *Days Inns Worldwide*, 445 F.3d at 905 (quoting *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 162 F.3d 724, 729 (2d Cir. 1998)). "[W]aiver is the intentional relinquishment or abandonment of a known right." *Id.* (quoting *United States v. Osborne*, 402 F.3d 626, 630 (6th Cir. 2005)). A failure to act timely to vacate a judgment for lack of personal jurisdiction may be considered a waiver of the

right to do so. *Id.*; see also *Rowe v. Pechiney World Trade Inc. (In re Computrex Intern., Inc.)*, 433 B.R. 197, 201 (Bankr. W.D. Ky 2010).

The moving party has the burden of demonstrating that its motion was brought timely and that any delay was justified. *Richard v. Allen*, 78 F.3d 585, 1996 WL 102419 *1 (6th Cir. 1996). Whether a Rule 60(b)(4) motion is made within a reasonable time "is dependent upon the facts in a case, including length and circumstances of delay in filing, prejudice to opposing party by reason of the delay, and circumstances warranting equitable relief." *In re G.A.D., Inc.*, 340 F.3d at 334 (citing *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990)). Although the timelines determination is fact specific, it is worth

repeating that, as noted in the cases cited above, the Sixth Circuit has found Rule 60(b)(4) motions filed in a range of 11 months to five years from entry of the judgment to be untimely.

Some circuits have declined to find that the timeliness requirement applies to Rule 60(b)(4) for void judgments. For example, according to the Fifth Circuit Court of Appeals:

> "[T]here is no time limit on Rule 60(b)(4) motions, and [the] doctrine of laches has no effect. As a general rule, the fact that such a motion is made long after the entry of a default judgment should not be an obstacle to the jurisdictional inquiry."

Jackson v. FIE Corp., 302 F.3d 515, 523-24 (5th Cir. 2002); *see also Norris v. Causey*, 869 F.3d 360, 365–66 (5th Cir. 2017) (Noting that "Rule 60(b)(4) motions have no time limit."); *Hertz Corp. v.*

Alamo Rent-A-Car, 16 F.3d 1126, 1130 (11th Cir. 1994) (Noting the Eleventh Circuit's acceptance of the premise that the "reasonable time" requirement does not apply to Rule 60(b)(4) motions, and citing similar cases from the First, Fifth, Seventh, Tenth and D.C. Circuits).

While it is true that the Sixth Circuit has not adopted the position of several other circuits, the approach in this circuit is arguably more consistent with the governing rule which clearly states that motions under Rule 60(b) "must be made within a reasonable time," with no exception for motions for relief from void judgments under subsection (b)(4). If void judgments under (b)(4) have absolutely no time limit for seeking to set them aside, it makes no

sense to include void judgments in the Rule's timeliness requirement.

Judge Michelson in the Eastern District of Michigan was likewise faced with the fact that several commentators and other circuits differ with the Sixth Circuit approach:

> The Court recognizes that there is authority to the contrary. For instance, the oft-cited Wright & Miller treatise states, "the requirement that the motion be made within a 'reasonable time,' which seems literally to apply to motions under Rule 60(b)(4), cannot be enforced with regard to this class of motion. A void judgment cannot acquire validity because of laches on the part of the judgment debtor." Mary Kay Kane, 11 Fed. Prac. & Proc. Civ. § 2862 (3d ed.). Many of the federal appellate courts have followed this reasoning. [citations omitted.]
>
> But this Court is bound by Sixth Circuit authority. And "[t]he Sixth

> Circuit has held in various cases that periods of anywhere between three and five years between the judgment and the filing of a 60(b)(4) motion were too long to permit the filing of such a motion for relief from judgment." *Williams-El v. Bouchard*, No. 05-CV-70616, 2016 U.S. Dist. LEXIS 60735, at *4 (E.D. Mich. May 9, 2016) (citing *Dailide*, 316 F.3d at 617).

Willie McCormick and Assocs., Inc. v. Lakeshore Engineering Servs., Inc., 2022 WL 4104013 at *4 (E.D. Mich. Sept. 8, 2022).

As Judge Michelson noted, lower courts in this circuit are bound by the approach mandated by the Sixth Circuit Court of Appeals – regardless of what commentators and other circuits may say. The same is true in this case.

Coney Island has presented the timeliness issue in its purest form. It has presented no

evidence to show that it did not receive the mailing of the complaint and summons. Indeed, counsel for Coney Island stipulated at the hearing that Coney Island was "on notice" of the default judgment no later than April of 2016. No action was taken for five to seven years, depending on when one starts and ends the count. Further, Coney Island has presented no proof relating to the reason for the years-long delay in taking action. Coney Island has not even contended that the delay should be considered reasonable under the circumstances if timeliness is a requirement.[4]

[4] Coney Island did not attempt to present any evidence of lack of prejudice, justification for the delay, or circumstances warranting equitable relief. It chose to rely solely on the legal position that timeliness should be disregarded, so it did not attempt to address the obvious potential prejudice that the Trustee would face from having to disgorge a satisfied judgment and deciding whether to start over in

Coney Island has instead taken the unyielding position that timing is totally irrelevant and that there is no amount of time that could lapse that would render a motion to vacate a void judgment untimely. In some circuits, that position would likely prevail, but not in the Sixth Circuit.

Based on Coney Island's long, unexcused delay, which is not outweighed by any showing of a lack of prejudice to the Trustee or other equitable concerns, the Court finds that the motion to set aside the default judgment was not

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pursuing now stale litigation on behalf of a nearly fully administered Chapter 7 estate of a debtor that ceased operating at least seven years ago. The Trustee also raised concerns about the running of the statute of limitations, which Coney Island argued might be saved by relation back. The Court makes no determination on that issue.

filed within a reasonable amount of time. Even if Coney Island can succeed in showing that the judgment is otherwise void due to improper service, its request to set aside the judgment must be denied based solely on the timeliness problem.

Accordingly, Coney Island's motion is denied.

IT IS SO ORDERED.

ADDENDUM

DATE	**ACTION**
02-11-15	Complaint filed.
02-23-15	Summons and complaint mailed to Coney Island. **
04-13-15	Request for Entry of Default.
04-13-15	Motion for Default Judgment. **
05-19-15	Default Judgment Order entered.
04-20-16	Trustee Demand Letter re the Default Judgment. +
05-16-16	Trustee's written, post-judgment discovery. +
06-28-16	Trustee Letter demanding responses to post-judgment discovery by 7-8-16. +
07-13-16	Trustee filed Motion to Compel. +
08-19-16	Trustee served by certified mail the order compelling responses and cover letter explaining the importance of same. +

05-07-18 06-04-18	Trustee Letters informing Coney Island of subpoenas issued to vendors with whom the Trustee believed Coney Island did business. +
09-14-20	Trustee commenced proceeding in Bankr. Court SDNY to register the judgment. +
01-13-21	Judgment recorded in Kings County, NY.
02-03-21	Trustee served Met Bank with Information Subpoena with Restraining Notice.
02-05-21	Met Bank advised Coney Island of hold on assets in account.
10-7-21	Hearing before the NY Bankr. Court on Coney Island's motion to vacate the judgment due to lack of jurisdiction.
10-12-21	NY Bankr. Ct denied the motion to vacate judgment (not on the merits but based on

	comity). (Coney Island subsequently appealed.)
10-28-21	Funds seized sufficient to satisfy the judgment. Trustee filed a satisfaction of judgment.
04-21-22	The NY District Court affirmed the NY Bankr. Court order.Coney Island filed in this Court the present motion to Set Aside/Vacate the default judgment.
07-08-22	Coney Island filed in this Court the present motion to Set Aside/Vacate the default judgment.

** Served to Coney Island's business address, with no direction to any person by name or title.

+ Served to Coney Island's business address and to the attn. of Daniel Beyda, CEO.

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VISTA-PRO AUTOMOTIVE, LLC, Plaintiff-Judgement-Creditor and Appellee, v. CONEY ISLAND AUTO PARTS UNLIMITED, INC., Defendant-Judgement-Debtor and Appellant	21 Civ. 8906 (PAE) OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

This appeal is from an order by the United States Bankruptcy Court for this District (the "New York Bankruptcy Court") denying, on comity grounds, a motion by appellant Coney Island Auto Parts Unlimited, Inc. ("Coney

Island") to vacate a default judgment order entered by a different court-the United States Bankruptcy Court for the Middle District of Tennessee (the "Tennessee Bankruptcy Court"). On appeal, Coney Island argues that it was error for the New York Bankruptcy Court (1) not to grant the motion to vacate and (2) to do so on a ground that had not been briefed or argued. Appellee Vista-Pro Automotive, LLC ("Vista") defends the order. For the reasons below, the Court affirms the order.

I. Factual and Procedural Background

On November 17, 2014, an involuntary bankruptcy petition against Vista was filed under Chapter 7 of the Bankruptcy Code in the Tennessee Bankruptcy Court. Dkt. 17 at 5. On

February 11, 2015, Vista commenced an adversary proceeding against Coney Island in that court,[1] seeking unpaid invoices totaling $48,696.91, plus reasonable attorney's fees and expenses. See Dkt. 6 ("Ginzburg Decl."), Ex. 1. On February 23, 2015, Vista served Coney Island by sending, via first class regular mail, a copy of the summons and complaint, to:

> Coney Island Auto Parts Unltd., Inc.
> 2317 McDonald Ave.
> Brooklyn, NY 11223

[1] "An adversary proceeding is essentially a self-contained trial-still within the original bankruptcy case-in which a panoply of additional procedures apply." *In re Denby-Peterson*, 941 F.3d 115, 129 n.71 (3d Cir. 2019) (quotation omitted); *see also Cohen v. Bucci*, 905 F.2d 1111, 1112 (7th Cir. 1990) (Easterbrook, J.) ("Adversary proceedings in bankruptcy are not distinct pieces of litigation; they are components of a single bankruptcy case.").

Id., Ex. 2. On May 19, 2015-with Coney Island having not appeared before the Tennessee Bankruptcy Court-the Hon. Randal S. Mashburn, United States Bankruptcy Judge, entered a default judgment against it in the amount of $48,696.21, plus $7 per diem. *Id.*, Ex. 5 (the "Judgment").

More than five years later, on July 22, 2020, Vista registered the Judgment in the New York Bankruptcy Court. *Id.*, Ex. 6. On January 13, 2021, Vista recorded the Judgment in the Office of the County Clerk in Kings County. *Id.*, Ex. 7. On February 3, 2021, Vista served Coney Island's bank, Metropolitan Commercial Bank ("Met Bank"), with an information subpoena and restraining notice. *Id.* On February 5, 2021, Met

Bank notified Coney Island that it had received the restraining notice and placed a hold on its account in the amount of $97,392.42. *Id.*, Ex. 8.

On September 23, 2021, Coney Island filed a motion in the New York Bankruptcy Court seeking vacatur of the Judgment entered by the Tennessee Bankruptcy Court. Coney Island argued that (1) it had already paid the invoices at issue in the adversary proceeding; and (2) service in the adversary proceeding had been improper as it did not comply with Bankruptcy Rule 7004(b)(3)'s requirement that service upon a corporation via first class mail be to the attention of a corporate officer.[2] On September 30, 2021,

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[2] *See Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93 (Bankr. 9th Cir. 2004) ("[N]ationwide service of process by first class mail is a rare privilege

Vista opposed Coney Island's motion. On October 4, 2021, Coney Island replied.

On October 7, 2021, the Hon. Cecelia G. Morris, United States Bankruptcy Judge-and at the time the court's Chief Judge-held a hearing on Coney Island's motion. She determined that the decision whether to vacate the Judgment should be made by the court that had issued it – the Tennessee Bankruptcy Court. She explained:

> [T]he debtor's Chapter 7 bankruptcy remains open in the Middle District ofTennessee .... Coney Island needs to go back to Tennessee. The trustee's litigation with Coney

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which should not be abused .... [T]hus, the service has to be made to a specifically named officer. Accordingly, service on corporation was insufficient under the plain words of Rule 7004(b)(3) when it failed to specify a person or even an office."); *Savage & Assocs., P. C. v. 1201 Owner Corp. (In re Teligent, Inc.)*, 485 B.R. 62, 68 (Bankr. S.D.N.Y. 2013) ("[S]ervice not directed to the attention of anybody in particular is not sufficient.") (citation omitted).

> Island will potentially enlarge the assets available to the debtor's creditors. That adversary [proceeding] was filed in Tennessee. Judge Mashburn granted motions to compel in relation to the entry of the default. Coney Island may be successful in vacating that default. From the papers submitted to this Court, it seems to appear that Coney Island was not served attention to the officer. The Court, though, in its discretion, believes Coney Island's recourse ... lies in Tennessee. Again, [quoting] 11 Federal Practice and Procedure [Section] 2787, "Regardless of the power of the registration court to act, it has been thought desirable as a matter of comity to require the moving party to seek relief from the court in which the judgment originally was rendered." So I'm going to deny Coney Island's motion[.] ... I understand it's not over, but it belongs in Tennessee, not here.

Dkt. 8, Ex. 1 (Transcript, or "Tr."), at 6-7. On October 12, 2021, Chief Judge Morris entered an

order formally denying the motion, for the reasons she had given at the hearing. *Id.*, Ex. 2.

On October 18, 2021, Coney Island filed a notice of appeal in the New York Bankruptcy Court. On October 28, 2021, the Marshal of the City of New York ("New York Marshal") served Met Bank a Property Execution with Notice to Garnishee, effectively ordering it to satisfy the Judgment. Dkt. 14 ("Blansky Decl."), Ex. B. On October 29, 2021, Coney Island filed a notice of appeal in this Court. Dkt. 1.

On November 12, 2021, Coney Island filed its opening brief. Dkt. 5 ("Mot."). On December 20, 2021, Vista filed its opposition brief. Dkt. 15 ("Opp."). On January 7, 2022, Coney Island filed its reply. Dkt. 16 ("Reply").

Coney Island did not move to stay satisfaction of the Judgment pending its appeal. On December 6, 2021, while its appeal to this Court was being briefed, the New York Marshal seized from Met Bank a sum sufficient to satisfy the Judgment. Blansky Decl., Ex. C.

II. Standard of Review

"District courts review the legal conclusions of the Bankruptcy Court de nova, and its findings of fact under the clearly erroneous standard." *In re AMR Corp.*, 610 B.R. 434,444 (S.D.N.Y. 2019) (internal quotation and alterations omitted). "Matters left to the court's discretion are reviewed for abuse of discretion." *In re Adelphia Commc 'ns Corp.*, 342 B.R. 122, 126 (S.D.N.Y. 2006) (internal citation omitted).

III. Discussion

A. Mootness

At the threshold, Vista argues that this appeal is moot because the Judgment has been satisfied. *See* Opp. at 8, 11-12; Blansky Deel., Ex. C ("[A] sum sufficient to satisfy the Judgment was seized by the Marshal of the City of New York in satisfaction of the Judgment."). Its premise is that satisfaction of the Judgment is a "comprehensive change in circumstance" which "cannot be unwound" Opp. at 12; *see In re Chateaugay Corp.*, 988 F.2d 322,325 (2d Cir. 1993) (appeal should be dismissed as moot when "events occur that would prevent the appellate court from fashioning effective relief" or where "implementation of ... relief would be inequitable"). Vista is mistaken.

Generally, when a party seeks restitution of funds collected from it pursuant to an invalid judgment, "the baseline rule in this Circuit is that "a party against whom an erroneous judgment or decree has been carried into effect is entitled, in the event of a reversal, to be restored by his adversary to that which he has lost thereby.'" *Vera v. Banco Bilbao Vizcaya Argentaria, S.A.*, 946 F.3d 120, 145 (2d Cir. 2019) (quoting *LiButti v. United States*, 178 F.3d 114, 120 (2d Cir. 1999)); *see also In re Lozito*, 43 F. Supp. 149, 153 (E.D.N.Y. 1941) (in bankruptcy case, finding that restitution should be made where the grounds for order pursuant to which funds had been paid no longer applied); *see generally* Restatement (First) of Restitution§ 74 cmt. a ("The reversing tribunal

can itself direct restitution either with or without conditions, or the tribunal which is reversed can on motion or upon its own initiative direct that restitution be made."). Whether a party "is entitled to [this] equitable remedy of restitution is a discretionary matter for a trial court." *LiButti*, 178 F.3d at 121.

Vista does not point to any authority barring courts from exercising such discretion in the context of Chapter 7 bankruptcy proceedings. To be sure, in some circumstances, equitable considerations have been held to justify dismissal of an appeal. *See, e.g., In re Chateaugay Corp.*, 988 F.2d at 326 (in bankruptcy reorganization matter, upholding dismissal, on equitable mootness grounds, of challenge to order requiring funds to

be disbursed, where payments had been "key component" of a settlement agreement, and the payments had already been issued to "faultless beneficiaries who are not parties to th[e] appeal" and had "presumably used the [payments] they ... received to meet their living expenses"). Here, however, the equities do not favor terminating at the jump Coney Island's challenge to the default judgment. Vista's only argument for doing so is the incorrect one that, categorically, a court may not award restitution of funds paid out on a judgment that is later held void. *See* Opp. at 12. And in contrast to *In re Chateaugay Corp.*, where the funds had been disbursed to third parties who had likely spent the money, the funds of Coney Island's that are at issue here been have

disbursed to a party (Vista) from which they can presumably be readily reclaimed. The Court therefore declines to dismiss the appeal as equitably moot.

B. The New York Bankruptcy Court's Decision to Abstain

The Court next turns to the New York Bankruptcy Court's decision to decline to resolve Coney Island's motion to vacate, in deference to its Tennessee counterpart.

The parties agree that the New York Bankruptcy Court could have reached the merits of that motion. The Judgment was registered in the New York Bankruptcy Court. *See* Mot. at 8 (citing James Moore, 7 MOORE'S FEDERAL PRACTICE, ¶ 60.28 (2d ed. 1979) ("[B]y registering the judgment in a particular forum the

creditor seeks to utilize the enforcement machinery of that district court[, and] it is not unreasonable to hold that the latter court has the power to determine whether relief should be granted the judgment debtor under [Rule] 60(b).")); Opp. at 15. And, as Coney Island points out, ample caselaw authorizes courts of competent jurisdiction to vacate default judgments entered by foreign bankruptcy courts. *See, e.g., In re Blutrich Herman & Miller*, 227 B.R. 53, 57 (Bankr. S.D.N.Y. 1998) ("If the Court rendering the challenged judgment never had jurisdiction over the person of the defendant or the res of the action, any such judgment is void and, therefore, subject to collateral attack. That attack may be made in any proceeding in any Court where the

validity of the judgment comes in issue.") (quotation omitted) (citing cases); *see also Covington Indus., Inc. v. Resintex A.G.*, 629 F.2d 730, 733 (2d Cir. 1980) (in context of Rule 60(b) motion for relief from default judgment, "the court of registration ... seems as qualified to determine the jurisdiction of the rendering court, particularly when the latter is a federal court of coordinate authority").[3]

The parties also appear to agree that the decision whether to defer on Coney Island's

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[3] Chief Judge Morris reserved judgment on whether she had authority to vacate the Judgment. *See* Tr. at 6 (distinguishing *Covington* and noting that the parties had failed to identify caselaw giving bankruptcy courts, as opposed to district courts, authority to vacate default judgments entered by foreign bankruptcy courts). The Court assumes arguendo that the New York Bankruptcy Court had this authority.

motion to vacate the default judgment, in deference to the court which had entered that judgment (the Tennessee Bankruptcy Court), was subject to an abuse of discretion standard. *See US. For Use & Benefit of Mosher Steel Co. v. Fluor Corp.*, 436 F.2d 383, 385 (2d Cir. 1970) ("*Mosher Steel*") ("Few would argue, however, that the court of registration lacks discretion in appropriate circumstances to refer the parties to the court which rendered judgment."); *Allstate Life Ins. Co. v. Linter Grp. Ltd.*, 994 F.2d 996,999 (2d Cir. 1993) ("[S]ince the extension or denial of comity is within the court's discretion, we will reverse the court's decision only when we find an abuse of discretion.").

Coney Island, however, argues that Chief Judge Morris abused her discretion in doing so. Its argument to this effect largely consists of its merits argument as to why the default judgment was defective, warranting vacatur. As to the decision to abstain from reaching those merits arguments in favor of the Tennessee Bankruptcy Court, Coney Island emphasizes that that decision may increase the parties' litigation costs and delay resolution of its challenge.

Those arguments are unpersuasive. Chief Judge Morris was well within her discretion to leave resolution of Coney Island's challenge to the Tennessee Bankruptcy Court, which had issued the default judgment. In exercising its discretion not to resolve the motion, she invoked a

fundamental principle of comity often invoked in this context-that "[r]egardless of the power of the registration court to act, it has been thought desirable ... to require the moving party to seek relief from the court in which the judgment originally was rendered." Tr. at 7 (quoting 11 Charles A. Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE 2787 (3d ed. 2002)).

Chief Judge Morrison's decision was all the more sensible because resolution of the motion to vacate the default judgment had the potential to affect Vista's ongoing bankruptcy proceeding in Tennessee. *See id*. at 6 (confirming with counsel that the "Chapter 7 trustee [is] marshalling assets into [the main] Chapter 7 case" and stating that

the "trustee's litigation with Coney Island will potentially enlarge the assets available").[4] The decision thus had a solid footing in precedent and reason. *See Mosher Steel*, 436 F.2d at 385; *Segal v. Trans World Airlines, Inc.*, 63 F. Supp. 2d 373, 381 (S.D.N.Y. 1999) (dismissing Rule 60(b) motion to vacate without prejudice to plaintiff's right to bring issue before bankruptcy court that had issued order); *Coleman v. Patterson*, 57 F.R.D. 146 (S.D.N.Y. 1972) (similar).

Coney Island's argument why Chief Judge Morris should have resolved its challenge to the

[4] Coney Island suggests that Chief Judge Morris erroneously conflated the adversary proceeding and the main proceeding. *See* Mot. at 12-13. This is mistaken. Fairly read, her bench ruling merely noted that the adversary proceeding's resolution had potential implications for Vista's Chapter 7 proceeding, a point that was clearly correct.

default judgment is, first, that lateraling that issue to the Tennessee Bankruptcy Court will cost the parties time and litigation expense, and, second, that insofar as Tennessee Bankruptcy Court had "no particular or prolonged history with this case," there are no institutional efficiencies to its resolving the motion. Mot. at 13-14. But these critiques, although responsible, do not make the decision to forbear an abuse of discretion. Concerns regarding the time and cost are mitigated by the straightforwardness of the issue, which appears to turn on a seemingly simple application of a bankruptcy Rule of national applicability.[5] *See* Tr. at 6-7 ("From the

[5] Federal Rule of Bankruptcy Procedure 7004(b)(3) provides: "[S]ervice may be made within the United States by first class mail postage ... by mailing a copy

papers submitted to this Court, it seems to appear that Coney Island was not served attention to the officer."). Moreover, with the Tennessee Bankruptcy Court's having entered the default judgment, Chief Judge Morris could reasonably have concluded that its prior engagement with Coney Island's circumstances gave it a leg up in resolving its present challenge. *See id.* at 6 ("Judge Mashburn granted motions to compel in relation to the entry of the default."). And even if no efficiencies stood to be gained, Chief Judge Morris could reasonably have concluded, as she articulated, that respect to the sister court which had entered the judgment under attack was of

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of the summons and complaint to the attention of an officer, a managing or general agent."

institutional value that counseled deference. Institutional values are routinely held to be valid grounds for a court's exercise of discretion, including whether to abstain in deference to a sister court. *See, e.g., In re Petrie Retail, Inc.*, 304 F.3d 223, 232 (2d Cir. 2002) ("Permissive abstention can be warranted 'in the interest of justice, or in the interest of comity with State courts or respect for State law.'") (quoting 28 U.S.C. § 1334(c)(1)); *Osuji v. Fed. Nat'l Mortg. Ass'n*, 571 B.R. 518, 521 (E.D.N.Y. 2017) (affirming bankruptcy court's decision to exercise discretion to abstain from deciding bankruptcy adversary proceeding); *Universal Well Servs., Inc. v. Avoca Nat. Gas Storage*, 222 B.R. 26, 32 (W.D.N.Y. 1998) (exercising discretion to abstain

from deciding bankruptcy matter and remanding to state court to address merits); *cf. In re Facebook, Inc., Initial Pub. Offering Derivative Litig.*, 797 F.3d 148, 158 (2d Cir. 2015) (affirming district court's exercise of discretion in refraining from reaching novel and complex question of subject matter jurisdiction where threshold standing issue was dispositive); *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018) (affirming district court's exercise of discretion in dismissing with prejudice "shotgun pleading," on ground that such pleadings "waste scarce judicial resources, inexorably broaden the scope of discovery, wreak havoc on appellate court dockets, and undermine the public's respect for the courts") (cleaned up); *see also generally In re*

World Trade Ctr. Disaster Site Litig., 722 F.3d 483,487 (2d Cir. 2013) ("It is well established that district courts possess the 'inherent power' and responsibility to manage their dockets 'so as to achieve the orderly and expeditious disposition of cases.'") (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)).[6]

Coney Island is thus simply wrong that Chief Judge Morris's decision not to reach the merits of the motion to vacate, based on comity and respect for a sister court, was outside "the range of permissible decisions." Mot. at 12 (quoting *Zervos v. Verizon NY., Inc.*, 252 F.3d 163,

[6] In any event, at this juncture, with the matter on appeal, there are no judicial efficiencies to be gained in having the New York Bankruptcy Court – which specifically declined to grapple with the underlying facts or merits arguments – decide the issue.

169 (2d Cir. 2001)).[7] Her decision was well within her considerable discretion.

C. The Decision to Issue the Order *Sua Sponte*

In a separate argument largely developed in its reply brief, Coney Island faults the New York Bankruptcy Court for denying its motion to vacate based on principles of comity, without seeking the parties' input. Although conceding that courts are authorized to raise issues *sua sponte*, Coney Island argues that Chief Judge Morris erred in ruling from the bench on its motion on a ground

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[7] The parties' briefs debate issues relate to the merits of the motion to vacate, including whether Coney Island (1) was properly served in the Tennessee Bankruptcy Court; and (2) in fact paid the invoices Vista sought in the adversary proceeding. Because the Court affirms the ruling below, the Court, like Chief Judge Morris, does not have occasion to reach these issues.

that the parties had not raised, without first giving them an opportunity to be heard. Reply at 5 (citing *Digitel, Inc. v. MCI Worldcom, Inc.*, 239 F.3d 187, 189 n.2 (2d Cir. 2001)).

Although Coney Island's critique that hearing it out before ruling on this ground would have been preferable is not without some force, in the context here, Chief Judge Morris's lack of consultation as to considerations of comity did not make her decision unlawful. As Chief Judge Morris articulated the point, the Tennessee Bankruptcy Court, where the Chapter 7 proceeding against Vista remained open, was the obvious forum to hear a challenge to a default judgment that that court had entered. Coney Island had not articulated why it had eschewed

the natural forum for such a challenge. And, critically, Chief Judge Morris's decision did not deny Coney Island relief – it merely deflected its bid to a sister court. *See* Tr. at 7 ("I understand it's not over, but it belongs in Tennessee, not here."). Notably, the primary case on which Coney Island relies for its criticism of a *sua sponte* bench decision, *Digitel, Inc.*, affirmed the lower court's judgment, even as it (gently) expressed disapproval of the practice. *See* 239 F.3d at 189 n.2 ("With great respect to the busy district court, we note that such lack of notice – even when the court has authority to act *sua sponte* – is to be avoided."). And the other cases Coney Island cites involving denial of the right to be heard are factually far afield, with far more at stake than

the question here of which forum would decide a challenge to a commercial default judgment. *See Day v. McDonough*, 547 U.S. 198, 210 (2006) (*sua sponte* dismissal of state prisoner's habeas petition); *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 760 F.2d 1347, 1365 (2d Cir. 1985) (*sua sponte* dismissal of complaint for failure to state a claim).[8]

CONCLUSION

For the foregoing reasons, the Court affirms the New York Bankruptcy Court's October 12, 2021 order denying Coney Island's motion to vacate. The Clerk of Court is respectfully directed to close this case.

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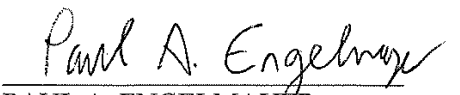
[8] Coney Island's argument that Vista's right to be heard was also infringed by the bench ruling falls flat, because Vista urges affirmance of that ruling

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: April 21, 2022
New York, New York

APPENDIX F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

VISTA-PRO AUTOMOTIVE, LLC, Plaintiff-Judgment Creditor, -against- CONEY ISLAND AUTO PARTS UNLIMITED, INC., Defendant-Judgment Debtor.	Chapter 7 Case No. 20-00401 (CGM)

ORDER DENYING DEFENDANT'S MOTION TO VACATE DEFAULT JUDGMENT

Upon the notice of motion and motion [ECF Nos. 5 and 6] (the "Motion") of defendant Coney Island Auto Parts Unlimited, Inc. (the "Defendant"), seeking entry of an order vacating

default judgment entered against it in the United States Bankruptcy Court for the Middle District of Tennessee (the "Tennessee Judgment"); and upon the objection of Jean Ann Burton, the Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of Vista-Pro Automotive to the Motion [ECF No. 7] (the "Objection"); and upon the Defendant's Reply in Further Support of its Motion to Vacate the Tennessee Judgment [ECF No. 9] (the "Reply"); and upon the hearing held before this Court on October 7, 2021 (the "Hearing") in connection with the Motion, the Objection and the Reply; and Daniel Ginzburg, Esq., of The Ginzburg Law Firm, P.C., having appeared at the Hearing on behalf of the

Defendant in support of the relief sought in the Motion and the Reply;

and David A. Blansky, Esq., of LaMonica Herbst & Maniscalco, LLP, having appeared at the Hearing on behalf of the Trustee in support of the Objection; and upon due deliberation and consideration of the facts and circumstances relevant to the matter; and upon the record at the Hearing, the transcript of which is incorporated herein by reference; and no additional notice being necessary or required; it is hereby

ORDERED, that the Motion is denied for the reasons stated on the record at the Hearing.

Dated: October 12, 2021
Poughkeepsie, New York

/s/ Cecelia G. Morris
Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

VISTA-PRO AUTOMOTIVE, LLC, Plaintiff, -against- CONEY ISLAND AUTO PARTS UNLIMITED, INC., Defendant.	Case No. 20-00401-cgm One Bowling Green New York, NY 10004-1408 Thursday, October 7, 2021 9:00 a.m.

TRANSCRIPT OF MOTION TO VACATE DEFAULT JUDGMENT FILED BY DANIEL GINZBURG ON BEHALF OF CONEY ISLAND AUTO PARTS UNLIMITED INC.
WITH HEARING TO BE HELD ON 10/7/2021 AT 09:00 AM AT VIDEOCONFERENCE (ZOOMGOV)
RESPONSES DUE BY 9/30/2021
(ATTACHMENTS: #1 DECLARATION OF DANIEL BEYDA, WITH EXHIBIT A
#2 DECLARATION OF DANIEL GINZBURG, WITH EXHIBITS 1-8
#3 PROPOSED ORDER #4 CERTIFICATE OF SERVICE) [5];

OBJECTION TO MOTION/CHAPTER 7 TRUSTEE'S OBJECTION TO DEFENDANT'S MOTION TO VACATE DEFAULT JUDGMENT ENTERED IN THE U.S. BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE (RELATED DOCUMENT(S) 5) FILED BY WENDY JILL ROTHSTEIN ON BEHALF OF JEANNE ANN BURTON WITH HEARING TO BE HELD ON 10/7/2021 (CHECK WITH COURT FOR LOCATION) (ATTACHMENTS: #1 EXHIBIT A - AFFIDAVIT OF PHILLIP YOUNG, ESQ.) [7]; REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO VACATE DEFAULT JUDGMENT (RELATED DOCUMENT(S) 5) FILED BY DANIEL GINZBURG ON BEHALF OF CONEY ISLAND AUTO PARTS UNLIMITED, INC. [9]

BEFORE THE HONORABLE CECELIA G. MORRIS (VIA TELECONFERENCE) UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES CONTINUED

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For Coney Island Auto Parts Unlimited, Inc.:

The Ginzburg Law Firm, P.C.
By: DANIEL GINZBURG, ESQ.
151 Highway 516, Unit 736
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(732) 284-3841

(Proceedings commence)

THE COURT: Good morning.

UNIDENTIFIED: Good morning.

MR. BLANSKY: Morning, Your Honor.

THE COURT: Case Number 20-00401, Vista-Pro Automotive LLC v. Coney Island Auto Parts Limited, Inc.

State your name and affiliation.

MR. BLANSKY: Good morning, Your Honor. Davis Blansky, Lamonica Herbst & Maniscalco, appearing on behalf of the respondent with respect to the motion that would be for the trustee of the Vista-Pro case out of Tennessee.

THE COURT: Is Mr. Ginzburg on the phone? Mr. Daniel Ginzburg?

MR. GINZBURG: Yes. Good morning, Your Honor. Daniel Ginzburg of the Ginzburg Law Firm on behalf of the movant and defendant/judgment debtor, Coney Island Auto Parts Unlimited, Inc.

THE COURT: Okay. This is a -- it was an involuntary case, and it's in the Middle District of Tennessee, and it is an ongoing case, correct?

MR. GINZBURG: No, Your Honor. It's not ongoing. I think the adversary proceeding was closed once the judgment was entered.

THE COURT: Okay. Okay. I think I have the background on it. Do you want to wish to add anything, Mr. Ginzburg?

MR. GINZBURG: No, Your Honor. If the Court has the briefing, I had the last word by way of

the reply brief, so I don't have much to add other than what's already on the papers.

THE COURT: And Mr. Blansky?

MR. BLANSKY: Good morning, Your Honor. I know you're familiar with the papers. Your Honor, (indiscernible) Mr. Ginzburg (indiscernible) final word. Obviously, we -- the trustee has disputed the inadequacy of the service, and we otherwise would rely on the arguments stated before the Court in the submissions.

THE COURT: Okay. Bankruptcy Rule 9024 makes Rule 60 of the Federal Rules of Procedure applicable in bankruptcy court, and Coney Island seeks relief under 60(b)(4). Rule 60(b)(4) provides that the court may relieve a party, or its

legal representative, from a final judgment order or proceeding if the judgment is void. And there's no time limit to attack a void judgment, and that's under 11 Federal Practice and Procedure, Wright & Miller, at 2862 (2021). Coney Island argues that it was improperly served with summons and complaint, thus the Middle District of Tennessee lacked personal jurisdiction over it, rendering the Tennessee judgment void. "Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied." Omni Capital International v. Rudolph Wolff & Co., 484 U.S. 97 (1987). "A judgment entered against parties not subject to the personal jurisdiction of the rendering court is

a nullity." Covington Industries v. Resintex A.G., 629 F.2d 730 (2d. Cir.)

Coney Island argues this Court must void the Tennessee judgment for lack of personal jurisdiction. Coney Island argues that the certificate of service attached to the adversary complaint shows that Coney Island was not served attention to an officer, as required under Federal Rules of Bankruptcy Procedure 7004(b)(3).

In this case, the Court believes it's more appropriate for Coney Island to present its case before the bankruptcy court in Tennessee. Under 11 U.S.C. 16 1963 [sic], a final judgment for recovery or money or property may be registered in any district in the United States by filing a

certified copy in the other district, and that's Colliers on 18 Bankruptcy at Section 7069.02.

Vista-Pro has registered its Tennessee judgment in the Southern District of New York. Under Rule 60(b), Coney Island seeks relief from the Tennessee judgment in this court. A Rule 60(b) motion is generally brought in the district court rendering judgment. Covington Industries Inc. v. Resintex A.G., 629 F.2d 730 (2d. Cir. 1980).

The Bankruptcy Court for the Middle District of Tennessee is the court that rendered the judgment. In Covington, the Second Circuit held that it was proper for a district court in the Southern District of New York to void a judgment rendered by a district court in the

Central District of California when only personal jurisdiction was at issue.

This Court has not been provided with case law that authorizes a bankruptcy court to void a foreign bankruptcy court's judgment, and this Court declines to do so. The debtor's Chapter 7 -- I thought the debtor's Chapter 7 bankruptcy remains open in the Middle District of Tennessee. It was a -- an 11, an involuntary 11, but I understood that there was a Chapter 7 trustee marshaling assets into a Chapter 7 case.

MR. BLANSKY: Your Honor, it's David Blansky. Yes. (Indiscernible) essentially local counsel to that bankruptcy trustee. This is obviously one of the assets being marshaled by that trustee.

THE COURT: Exactly. So Coney Island needs to go back to Tennessee. The trustee's litigation with Coney Island will potentially enlarge the assets available to the debtor's creditors. That adversary was filed in Tennessee. Judge Mashburn granted motions to compel in relation to the entry of the default. Coney Island may be successful in vacating that default. From the papers submitted to this Court, it seems to appear that Coney Island was not served attention to the officer. The Court, though, in its discretion, believes Coney Island's recourse lives -- lies in Tennessee. Again, 11 Federal Practice and Procedure 2787, "Regardless of the power of the registration court to act, it has been thought

desirable as a matter of comity to require the moving party to seek relief from the court in which the judgment originally was rendered."

So I'm going to deny Coney Island's motion, and Chapter 7 trustee submit an order. I understand it's not over, but it belongs in Tennessee, not here.

MR. BLANSKY: I will do so, Your Honor. Thank you.

MR. GINZBURG: Thank you, Your Honor.

THE COURT: Thank you.

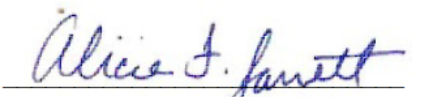
(Proceedings concluded)

* * * * *

CERTIFICATION

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

Date: October 20, 2021



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