To Be Argued By:
Michael Radine
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CTQ-2023-00002

Court of Appeals

STATE OF NEW YORK

ESTER LELCHOOK, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVID MARTIN LELCHOOK, MICHAEL LELCHOOK, YAEL LELCHOOK, ALEXANDER LELCHOOK, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DORIS LELCHOOK, MALKA KUMER, CHANA LIBA KUMER, MIRIAM ALMACKIES, CHAIM KAPLAN, RIVKA KAPLAN, BRIAN ERDSTEIN, KARENE ERDSTEIN, MA'AYAN ERDSTEIN, CHAYIM KUMER, NECHAMA KUMER, LAURIE RAPPEPPORT, MARGALIT RAPPEPORT, THEODORE (TED) GREENBERG, MOREEN GREENBERG, JARED SAUTER, DVORA CHANA KASZEMACHER, CHAYA KASZEMACHER ALKAREIF, AVISHAI REUVANE, ELISHEVA ARON, YAIR MOR, MIKIMI STEINBERG,

Plaintiffs-Appellants,

and

DORIS LELCHOOK,

Plaintiff,

(Caption Continued on the Reverse)

On Questions Certified by the United States Court of Appeals for the Second Circuit (USCOA Docket No. 21-975-cv)

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

Robert J. Tolchin
THE BERKMAN LAW OFFICE, LLC
829 East 15th Street, Box 7
Brooklyn, New York 11230
718-855-3627
rtolchin@berkmanlaw.com

Michael Radine
Gary M. Osen
Ari Ungar
Dina Gielchinsky
Aaron Schlanger
OSEN LLC
1441 Broadway
New York, New York 10018
212-354-0111
mradine@osenlaw.com

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Attorneys for Plaintiffs-Appellants

v.

FRANSABANK SAL, MIDDLE EAST AFRICA BANK SAL, BLOM BANK SAL, BYBLOS BANK SAL, BANK AUDI SAL, BANK OF BEIRUT SAL, LEBANON AND GULF BANK SAL, BANQUE LIBANO-FRANCAISE SAL, BANK OF BEIRUT AND THE ARAB COUNTRIES SAL, JAMMAL TRUST BANK SAL, JOHN DOES 1-50,

Defendants,

and

SOCIETE GENERALE DE BANQUE AU LIBAN SAL,

Defendants-Appellees.

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 6

I. New York's Long Arm Statute Does Not Bar Successor Liability.....6

A. New York Law States that a Successor Can Inherit Its Predecessor's Own Jurisdictional Contacts in Appropriate Circumstances.....6

B. Successor Jurisdiction Is Not Limited to Cases Where the Successor and Predecessor Are "One and the Same" 11

II. SGBL Fails to Explain Why Its View of Successor Jurisdiction Would Not Lead to the "Serious Abuse" Identified in *Lelchook*. 19

A. "Serious Abuse" Is Not Allayed by Forcing Plaintiffs to Pursue SGBL in Lebanon 20

B. SGBL Is Not the Victim of LCB's Decision to Support Hezbollah.....23

CONCLUSION.....28

TABLE OF AUTHORITIES

Cases

3M v. Eco Chem, Inc.,
757 F.2d 1256 (Fed. Cir. 1985).....21

Abbacor, Inc. v. Miller,
No. 01-cv-0803 (JSM), 2001 U.S. Dist. LEXIS 13385
(S.D.N.Y. Aug. 31, 2001) 7, 17

American Tr. Ins. Co. v. Sartor,
3 N.Y.3d 71 (2004) 6

Andrew Greenberg, Inc. v. Sir-Tech Software, Inc.,
4 N.Y.3d 185 (2005) 10, 11

Aybar v. Aybar,
37 N.Y.3d 274 (2021) 10

Bartlett v. Société Générale De Banque Au Liban Sal,
No. 19-cv-7 (CBA) (TAM), 2023 U.S. Dist. LEXIS 56982
(E.D.N.Y. Mar. 31, 2023) 28

Bartlett v. Société Générale De Banque Au Liban Sal,
No. 19-cv-7 (CBA) (VMS), 2020 U.S. Dist. LEXIS 229921
(E.D.N.Y. Nov. 25, 2020) 27

Boim v. Holy Land Foundation for Relief & Development,
549 F.3d 685 (7th Cir. 2008) 24

Burgos v. Pulse Combustion,
227 A.D.2d 295 (1st Dep't 1996) 16

Cargo Partner AG v. Albatrans, Inc.,
352 F.3d 41 (2d Cir. 2003).....14

CenterPoint Energy, Inc. v. Superior Court,
157 Cal. App. 4th 1101 (Cal. Ct. App. 2007) 18

City of Richmond, Va. v. Madison Mgmt. Grp., Inc.,
918 F.2d 438 (4th Cir. 1990) 1, 3, 8, 17

Daou v. BLC Bank, S.A.L.,
No. 20-cv-4438 (DLC), 2021 U.S. Dist. LEXIS 69502
(S.D.N.Y. Apr. 9, 2021) 21

Deutsche Bank Sec., Inc. v. Mont. Bd. of Invs.,
7 N.Y.3d 65 (2006) 20

Du Quenoy v. Am. Univ. of Beirut,
No. 18-cv-6962 (ER), 2019 U.S. Dist. LEXIS 167165
(S.D.N.Y. Sep. 27, 2019) 21

Elghossain v. Bank Audi S.A.L.,
No. 21-cv-2162 (PGG) (BCM), 2023 U.S. Dist. LEXIS 175684
(S.D.N.Y. Sep. 29, 2023) 22

Estates of Ungar v. Palestinian Auth.,
304 F. Supp. 2d 232 (D.R.I. 2004) 21

Fitzgerald v. Fahnestock & Co.,
286 A.D.2d 573 (1st Dep't 2001) 14, 15

Gould v. ILKB, LLC,
No. 20-cv-5154 (DRH) (JMW), 2022 U.S. Dist. LEXIS 103363
(E.D.N.Y. June 9, 2022) 15

Grant-Howard Assoc. v. General Housewares Corp.,
63 N.Y.2d 291 (1984) 14

Holme v. Global Minerals & Metals Corp.,
63 A.D.3d 417 (1st Dep't 2009) 15

Jeffrey v. Rapid Am. Corp.,
529 N.W.2d 644 (Mich. 1995)..... 8, 9, 13

Kaplan v. Lebanese Canadian Bank, SAL,
999 F.3d 842 (2d Cir. 2021)) 24

Kreutter v. McFadden Oil Corp.,
71 N.Y.2d 460 (1988) 27

Ladenburg Thalmann & Co. v. Tim's Amusements, Inc.,
275 A.D.2d 243 (1st Dep't 2000) 15

Leon v. Shmukler,
992 F. Supp. 2d 179 (E.D.N.Y. 2014).....7

LiButti v. United States,
178 F.3d 114 (2d Cir. 1999).....7

Licci v. Lebanese Can. Bank, SAL,
20 N.Y.3d 327 (2012).....7

Martinez v. Am. Std.,
91 A.D.2d 652 (2d Dep't 1982).....9

Metro. Partners Fund IIIA, LP v. GemCap Lending I, LLC,
2023 NY Slip Op 33042(U) (Sup. Ct. N.Y. County Sept. 1, 2023).....16

Ostrem v. Prideco Secure Loan Fund, LP,
841 N.W.2d 882 (Iowa 2014).....18

Perry Drug Stores v. Csk Auto Corp.,
93 F. App'x 677 (6th Cir. 2003)..... 12, 20

Schenin v. Micro Copper Corp.,
272 F. Supp. 523 (S.D.N.Y. 1967).....17

Schumacher v. Richards Shear Co.,
59 N.Y.2d 239 (1983)..... 6, 12

Semenetz v. Sherling & Walden, Inc.,
21 A.D.3d 1138 (3rd Dep't 2005).....2, 7

Simmers v. American Cyanamid Corp.,
576 A.2d 376 (Pa. Super. Ct. 1990)..... 3, 12

Societe Anonyme Dauphitex v. Schoenfelder Corp.,
No. 07-cv-489 (RWS), 2007 U.S. Dist. LEXIS 81496
(S.D.N.Y. Nov. 1, 2007).....16

Société Générale v. Fla. Health Scis. Ctr., Inc.,
No. 03-cv-615 (MGC), 2003 U.S. Dist. LEXIS 21502
(S.D.N.Y. Dec. 1, 2003)..... 7, 17

State ex rel. Stein v. E. I. du Pont de Nemours & Co.,
879 S.E.2d 537 (N.C. 2022)..... *passim*

U.S. Bank Nat'l Ass'n v. Bank of Am. Nat'l Ass'n,
916 F.3d 143 (2d Cir. 2019)..... 13, 14, 19

Williams v. Bowman Livestock Equip. Co.,
927 F.2d 1128 (10th Cir. 1991).....8

Statutes

18 U.S.C. § 2334.....21

N.Y. C.P.L.R. § 302.....1, 6

Other Authorities

Duggan Flanakin, *Are Lebanese Banks Today's BCCI?*, The National Interest (Nov. 10, 2023), *available at* https://nationalinterest.org/blog/lebanon-watch/are-lebanese-banks-today's-bcci-207200 22

U.S. Dep't of Treasury, *Joining Partners, U.S. Treasury Sanctions Former Central Bank Governor of Lebanon and Co-conspirators in International Corruption Scheme* (August 10, 2023) *available at* https://home.treasury.gov/news/press-releases/jy1687 22

Treatises

2 Jurisdiction in Civil Actions § 7.03 (2022).....15

INTRODUCTION

Case law from New York and across the country supports answering the Second Circuit's certified question, whether "an entity that acquires all of another entity's liabilities and assets, but does not merge with that entity, inherit[s] the acquired entity's status for purposes of specific personal jurisdiction," A439, in the affirmative.[1] The "great weight of persuasive authority" supports imputing jurisdictional status here, *City of Richmond, Va. v. Madison Mgmt. Grp., Inc.*, 918 F.2d 438, 454 (4th Cir. 1990), as does New York law. These cases consistently state that a court has jurisdiction over a corporate successor where the predecessor is subject to personal jurisdiction in that forum and that forum's law permits courts to impute the liabilities of the predecessor to its successor.

SGBL argues that, notwithstanding the rule's broad acceptance, this principle cannot be true in New York because it is not explicitly included in New York's long arm statute, N.Y. C.P.L.R. § 302. According to SGBL, the long arm statute "limits imputed liability to circumstances when a defendant acts 'through an agent,'" and "[a]dding 'a predecessor' to the list of third parties whose actions are imputed to a

[1] SGBL requests at some length that the Court reformulate the first certified question, but without sufficient justification (or even explanation for replacing the word "acquires" with the phrase "expressly assumes"). Br. at 4-7. The Second Circuit's phrasing was clear and well-reasoned and does not necessitate reformulation. SGBL does not raise any arguments at all as to the second certified question.

defendant would improperly 'amend [the] statute by adding words that are not there'…." SGBL Brief ("Br.") at 23 (citation omitted). Under its theory, New York courts would have no jurisdiction over SGBL because it is not alleged to have committed the torts at issue itself or acted as LCB's agent.

This is a misunderstanding of how successor liability works—it is the *predecessor's* contacts with the jurisdiction that are assessed under the long arm statute, not the successor's. The successor then "inherit[s] its predecessor's jurisdictional status.'" A420 (quoting *Semenetz v. Sherling & Walden, Inc.*, 21 A.D.3d 1138, 1140-41 (3rd Dep't 2005)). If jurisdiction depended on the successor's jurisdictional contacts, the doctrine of successor jurisdiction would not exist in any form, and defendants would easily evade the jurisdiction of New York courts by reorganizing out of state. And indeed, SGBL points to no case in any jurisdiction that supports its urged rule.

Like other jurisdictions, New York courts have recognized "several situations" in which a successor inherits its predecessor's jurisdictional status. A421. SGBL does not dispute that the circumstances recognized in New York include three of the four exceptions to the principle that a buyer of a corporation's assets does not acquire liabilities: (1) merger/de facto merger, (2) mere continuation, and (3) fraudulent transfers. None of these forms of "imputed liability" (to use SGBL's term) are found

in the long arm statute. The fourth exception—the successor's explicit or implicit assumption of the predecessor's liabilities—acts no differently.

To force these circumstances into its theory, SGBL argues that in the first two circumstances, the successor *is* the wrongdoer because the predecessor and successor are "one and the same." Br. at 26. It then asks this Court to "bless that rationale" it has invented but offers no legal support for it. Br. at 27.

The Court should decline this invitation—the case law is clear that it is the successor's acquisition of the predecessor's liabilities (including, sometimes, by becoming "one and the same" as the predecessor) that causes it to inherit the predecessor's jurisdictional status. Indeed, in many cases, the predecessor *survived*, in at least a defunct form, much like LCB claims it is now. Thus, SGBL is unable to explain why New York should resist the widely accepted authority that "permits imputation of a predecessor's actions upon its successor" for personal jurisdiction purposes "*whenever* forum law would hold the successor liable for its predecessor's actions." *Madison Mgmt. Grp., Inc.*, 918 F.2d at 454 (quoting *Simmers v. American Cyanamid Corp.*, 576 A.2d 376, 385 (Pa. Super. Ct. 1990)) (emphasis in *Simmers*).

Nevertheless, to distinguish the "many other courts" that support successor jurisdiction, SGBL argues that New York's long arm statute is narrower than those other states', whose long arm statutes are coextensive with the due process requirements. SGBL does not point to any language in another state's long arm

statute that includes the principle of successor jurisdiction in a way that New York's does not. SGBL only suggests that New York's long arm statute includes a "purposeful affiliation" standard that, it claims, precludes successor jurisdiction in a way that due process requirements would not—but that term is just a synonym of "purposeful availment," the term used in both N.Y. C.P.L.R. § 302 and due process analyses.

SGBL is also unable to articulate why its preferred rule would not lead to "serious abuse," as the Second Circuit warned. It argues that Plaintiffs could try to enforce a judgment against LCB by pursuing SGBL in Lebanon, or moving in some unspecified way against unspecified assets in New York, whatever those may be. But that does nothing to allay the Second Circuit's concern that SGBL would "escape jurisdiction" *in New York* with LCB's assets and liabilities in tow. A438. Just as New York courts do not require Plaintiffs to chase a successor in a de facto merger to a foreign venue, this Court should not do so in these circumstances. That is especially true here, where Plaintiffs would have to enforce a Hezbollah-related judgment on SGBL in Lebanon, a country dominated by Hezbollah (SGBL does not dispute that characterization made in Plaintiffs' opening brief at 34, 37). But in any event, New York state's interest in providing a forum for redress for injuries arising from in-

forum conduct does not end at providing judgments that New York courts cannot enforce because corporations have moved their assets out of the courts' jurisdiction.[2]

Incredibly, SGBL argues that holding it accountable for its liabilities in New York would unfairly victimize *it* because when it acquired "any and all of [LCB]'s liabilities … of any kind, character or description, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, determined, determinable or otherwise," A61, ¶ 2.3, it simply could not have anticipated claims against it in New York. Of course, SGBL purchased LCB because the bank faced collapse after the United States designated it as an active supporter of Hezbollah—and Plaintiffs had *already sued LCB* in New York in 2008 for its support of Hezbollah, including under the Anti-Terrorism Act ("ATA") as of 2009. *See* Amended Complaint, *Licci v. Lebanese Canadian Bank, SAL*, No. 08-cv-07523-GBD (S.D.N.Y. filed Jan. 22, 2009). The fact that SGBL could not have specifically anticipated that Plaintiffs' ATA claims would later be premised on a 2016 amendment to the ATA as the precise, current legal basis for its liability self-evidently does not raise a fairness issue.

[2] SGBL asserts that LCB "continues to operate," Br. at 6—to be clear, LCB is by its own assertion "defunct" and "insolvent." *See* Pls. Opening Brief at 35 (quoting LCB's statement to the Supreme Court in A54, ¶ 129). Its "operation" appears limited to defending lawsuits (that is the "admission" SGBL references, Br. at 6). Given that LCB is insolvent, it is not clear who is paying its legal bills.

ARGUMENT

I. New York's Long Arm Statute Does Not Bar Successor Liability

A. New York Law States that a Successor Can Inherit Its Predecessor's Own Jurisdictional Contacts in Appropriate Circumstances

SGBL's principal argument is that the district court lacks jurisdiction in New York over it as the successor to LCB's liabilities because New York's long arm statute, N.Y. C.P.L.R. § 302, does not explicitly state that successor jurisdiction exists. According to SGBL, the long arm statute only references the wrongdoer itself and its agent, and "[a]dding 'a predecessor' to the list of third parties whose actions are imputed to a defendant would improperly 'amend [the] statute by adding words that are not there'…." Br. at 23 (quoting *American Tr. Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004)). Thus, SGBL argues, the long arm statute "limits imputed liability to circumstances when a defendant acts 'through an agent.'" *Id.* at 22 (quoting § 302(a)). Under this theory, New York courts would have no jurisdiction over SGBL because it is not alleged to have committed the torts at issue itself or acted as LCB's agent. In reality, of course, New York law "impute[s] liability" to successors in several circumstances, including the explicit assumption of liabilities. *Schumacher v. Richards Shear Co.*, 59 N.Y.2d 239, 245 (1983).

But the issue before this Court is not whether SGBL's own actions satisfy the long arm statute (or whether it is LCB's agent) but whether SGBL has "inherited *LCB's* jurisdictional status," including its contacts with the forum. As the Second

Circuit set forth in its review of New York law, New York courts and courts applying New York law have "recognize[d] that in certain circumstances a successor corporation 'may inherit *its predecessor's jurisdictional status*.'" A420 (quoting *Semenetz*, 21 A.D.3d at 1140-41) (emphasis added). *See also* A421 ("'a successor may inherit its predecessor's jurisdictional status in several situations'") (quoting *Société Générale v. Fla. Health Scis. Ctr., Inc.*, No. 03-cv-615 (MGC), 2003 U.S. Dist. LEXIS 21502, at *13 (S.D.N.Y. Dec. 1, 2003)). It is the "acts of a predecessor" that the court assesses under the long arm statute, not the acts of the successor. A421 (quoting *Abbacor, Inc. v. Miller*, No. 01-cv-0803 (JSM), 2001 U.S. Dist. LEXIS 13385, at *12 (S.D.N.Y. Aug. 31, 2001)). Thus, it is *LCB*'s jurisdictional status that is premised on the long arm statute, and this Court has already found that LCB's acts satisfied N.Y. C.P.L.R. § 302's requirements. *See Licci v. Lebanese Can. Bank, SAL*, 20 N.Y.3d 327 (2012). The long arm statute does not have to be applied *again* as to SGBL.[3]

As Plaintiffs showed in their opening brief, "[t]he great weight of persuasive authority" in other jurisdictions likewise imputes the "*predecessor's actions* upon its

[3] "It is well-settled 'that when a person is found to be a successor in interest' to a person over whom the court has personal jurisdiction, 'the court gains personal jurisdiction over [the successor] simply as a consequence of their status as a successor in interest, without regard to whether they had any other minimum contacts with the state.'" *Leon v. Shmukler*, 992 F. Supp. 2d 179, 190 (E.D.N.Y. 2014) (quoting *LiButti v. United States*, 178 F.3d 114, 123 (2d Cir. 1999)).

successor" for personal jurisdiction purposes. Opening Br. at 30-31 (quoting *Madison Mgmt. Grp., Inc.*, 918 F.2d at 454). *See also id.* ("A corporation's contacts with a forum may be imputed to its successor if forum law would hold the successor liable for the actions of its predecessor.") (quoting *Williams v. Bowman Livestock Equip. Co.*, 927 F.2d 1128, 1132 (10th Cir. 1991)). The Supreme Court of Michigan noted that this position "is in no way unique[—n]umerous cases hold that a corporation may be subject to personal jurisdiction in a foreign forum if the contacts of its predecessors are constitutionally sufficient." *Jeffrey v. Rapid Am. Corp.*, 529 N.W.2d 644, 652 n.6 (Mich. 1995).

The North Carolina Supreme Court, in a decision cited by SGBL, explained that personal jurisdiction can be "established by imputing a predecessor company's contacts to its out-of-state successors"—including where, as there, liabilities are "expressly assumed." *State ex rel. Stein v. E. I. du Pont de Nemours & Co.*, 879 S.E.2d 537, 545, 559 (N.C. 2022). Thus, successor jurisdiction obtains "whenever (1) the *predecessor is subject to personal jurisdiction* in a particular forum; and (2) that forum's law permits courts to impute the liabilities of the predecessor to its successors." *Id.* (emphasis added). That decision joined "many other courts that have decided this question." *Id.* at 546.

SGBL attempts to distinguish these decisions by arguing that the New York long arm statute is simply more "limited" than the long arm statutes at issue in those

cases. *See* Br. at 20, 40, 41 n.8. For example, SGBL argues: "Even if knowledge of the seller's contacts is enough for jurisdiction in North Carolina—whose long-arm statute gives its courts the full jurisdictional powers permissible under federal due process—it is not enough here. New York's long-arm statute requires more than mere 'foreseeability'; it requires 'purposeful affiliation' with the State." Br. at 41 (cleaned up; quoting *Martinez v. Am. Std.*, 91 A.D.2d 652, 653 (2d Dep't 1982)). But *Martinez* makes clear that the term "purposeful affiliation" is synonymous with "purposeful availment" as used in the due process analysis (indeed, New York cases usually use the latter term). 91 A.D.2d at 653-54.

But even if SGBL were right, and the long arm analysis had to be applied a second time to the successor, the result would be the same: "a company may take certain *affirmative steps* that justify both the imputation of those liabilities and the exercise of jurisdiction," including "[a]ssuming certain liabilities," which "requires a party to weigh the risks at hand and affirmatively decide whether to become legally responsible for them …." *Stein*, 382 N.C. at 560-61 (emphasis added). *See also Jeffrey*, 529 N.W.2d at 655 ("This express assumption of liability is a deliberate undertaking on behalf of Rapid American that amounts to a purposeful availment of Michigan opportunities."). SGBL acquired all of LCB's liabilities knowing those included widespread liabilities to Hezbollah's victims due to LCB's massive support

for the terrorist group—and that it was *already a defendant in a civil lawsuit in New York* arising from its support for Hezbollah.

Rather than relying on its long arm statute, the North Carolina Supreme Court provided the same justifications Plaintiffs raised in their prior brief. For example, it adopted the reasoning from the Pennsylvania decision *Simmers* (also adopted by the Supreme Court of Michigan in *Jeffrey*) that, "[w]hen a successor corporation assumes the liabilities of its corporate predecessors, the successor in effect consents to be held liable in the same locations where its predecessor would have been exposed." *Id.* at 545 (quoting *Simmers*, 576 A.2d at 3). SGBL argues that New York law would not find consent so "lightly," but its only support for that argument is a case stating that the designation of an agent for service of process does not constitute a general consent to jurisdiction in that forum, Br. at 41-42 (citing *Aybar v. Aybar*, 37 N.Y.3d 274, 283 (2021)), an entirely irrelevant concept.[4]

SGBL provides only one case in support of its theory that New York does not permit successor jurisdiction because it is not included in the long arm statute: *Andrew Greenberg, Inc. v. Sir-Tech Software, Inc.*, 4 N.Y.3d 185 (2005). It argues that there, this Court "did not hold that the predecessor entities' jurisdictional status subjected the defendants to personal jurisdiction," but rather "looked to the long-arm

[4] SGBL also states that Plaintiffs did not preserve an argument that SGBL explicitly "consented" to New York jurisdiction in a forum selection clause—but as SGBL admits, that was an "analog[y]." Br. at 42 n.9.

statute" to reach the successor itself. Br. at 17. But the facts of that case cannot bear all the weight SGBL places on it. As SGBL concedes, the Canadian successors themselves "continued to do business in New York" which injured the plaintiff. *Id.* (quoting *Andrew Greenberg*, 4 N.Y.3d at 191). The Court therefore had no need to analyze successor jurisdiction because the trial court already found that the successor corporations "had allegedly entered into licensing agreements to market and sell [the relevant] products in New York." *Andrew Greenberg*, 4 N.Y.3d at 190. The Court did note that "the Canadian defendants reincarnated themselves as successors to their New York business," but the basis of jurisdiction was that they, "in their Canadian corporate capacity, continued to do business in New York in violation of their contractual obligations to [plaintiff]." *Id.* at 191.

B. Successor Jurisdiction Is Not Limited to Cases Where the Successor and Predecessor Are "One and the Same"

Because none of the successor jurisdiction cases in New York suggest the successor must be the predecessor's "agent," SGBL argues that those cases imply, *sub silentio*, that the successor *is* the wrongdoer. SGBL bases the argument on the fact that some decisions note the successor and predecessor are, following certain forms of acquisition, "one and the same." But those cases only note the identity between successor and predecessor as evidence that the former assumed the latter's liabilities where the successor might otherwise deny doing so (indeed, in some cases the predecessor survives in some form, as it does here). These types of acquisitions

are among the "exceptions" to "the general rule that a corporation which acquires the assets of another is not liable for the torts of its predecessor." *Schumacher*, 59 N.Y.2d at 244-45. *See also* A421 (noting New York case law recognizing that "a successor may inherit its predecessor's jurisdictional status through circumstances that correspond to some of the successor liability exceptions").

Here, the first enumerated exception is at issue: SGBL has "expressly … assumed the predecessor's tort liability." *Schumacher*, 59 N.Y.2d at 245. This exception acts no differently than the others for determining successor liability or successor jurisdiction. *See Simmers*, 576 A.2d 376, 390 (1990) (explaining that without successor jurisdiction, "a corporation which *voluntarily or by the operation of law* assumes its predecessor's liabilities may be able to avoid the jurisdiction of the very forum where the liability accrued simply because it never did business within that forum.") (emphasis added). *See also Perry Drug Stores v. Csk Auto Corp.*, 93 F. App'x 677, 681 (6th Cir. 2003) ("A court may impute the jurisdiction of a corporate predecessor to its successor where the successor expressly assumed the liability of the predecessor corporation.").

As Plaintiffs have shown, courts and treatises have repeatedly explained that the principle of successor jurisdiction is *not* premised on the successor being the same entity as its predecessor, but rather on its assuming the predecessor's

liabilities—any unity of identity in parties, as in mergers, is simply the *mechanism* by which the successor acquires the predecessor's liabilities.

For example, the Second Circuit explained at length in *U.S. Bank Nat'l Ass'n v. Bank of Am. Nat'l Ass'n*, 916 F.3d 143 (2d Cir. 2019), that mergers result in inherited jurisdiction precisely because the successor has acquired the predecessor's liabilities: "Upon a merger between two (or more) corporations, each of the merger partners is deemed to survive in the merged entity, and the surviving entity is *therefore* liable for the liabilities of the corporations that joined in the merger." 916 F.3d at 155 (emphasis added). It then quoted a passage from a major treatise on the law of corporations, explaining that the distinction between mergers and asset purchases is that in the former, the "surviving corporation is subject to *all the liabilities* of the acquired corporations," whereas that is not necessarily true for the latter. *Id.* at 155-56 (quoting James D. Cox & Thomas Lee Hazen, 4 Treatise of the Law of Corporations § 22:8) (emphasis added). Other courts have made this clear as well. *See Jeffrey*, 529 N.W.2d at 651 ("When two or more corporations merge, the surviving corporation generally succeeds to all the liabilities of the constituent corporations.").

SGBL argues that the acquisition of liabilities "is not the point on which the Second Circuit grounded its rationale" in *U.S. Bank*, but to do so, it is forced to alter the language of that case in its quotation, writing: "the Second Circuit reasoned that

the merged entity is subject to jurisdiction because the 'successor by merger is deemed by operation of law to be both the surviving corporation and the absorbed corporation.'" Br. at 28 (misquoting *U.S. Bank*, 916 F.3d at 156) (SGBL's misleading emphasis omitted). But the sentence SGBL misquotes does not end there: "Because a successor by merger is deemed by operation of law to be both the surviving corporation and the absorbed corporation, *subject to all the liabilities of the absorbed corporation*, we see no reason to doubt that Bank of America, as the surviving entity, would be subject to jurisdiction in Indiana in a suit based on breach of LaSalle's contract if LaSalle's Indiana-directed actions in relation to the contract would have made Lasalle subject to Indiana jurisdiction." *U.S. Bank*, 916 F.3d at 156.

SGBL also has no meaningful answer for the other case law and treatises Plaintiffs cited, including *Fitzgerald v. Fahnestock & Co.*, 286 A.D.2d 573, 575 (1st Dep't 2001) ("The concept upon which [the de facto merger] doctrine is based is 'that a successor that effectively takes over a company in its entirety should carry the predecessor's liabilities as a concomitant to the benefits it derives from the good will purchased.'") (quoting *Grant-Howard Assoc. v. General Housewares Corp.*, 63 N.Y.2d 291, 296 (1984)); *Cargo Partner AG v. Albatrans, Inc.*, 352 F.3d 41, 44–45 (2d Cir. 2003) (explaining that "when two corporations merge to become a single entity, … the successor corporation [is] automatically liable for the debts of both predecessors [because] it *is* both predecessors."); and 2 Jurisdiction in Civil Actions

§ 7.03 (2022) ("The basic test seems to gear the jurisdiction question to whether, as a substantive matter, the successor corporation may be liable for the obligations of the predecessor…. If it is liable for the predecessor's obligations …, it will be subject to personal jurisdiction in a suit to enforce the obligation if the predecessor would have been subject to such jurisdiction.").

Moreover, courts have recognized de facto mergers and other forms of successor liability even where the predecessor survives, including for successor jurisdiction purposes. For example, a federal court applying New York law found a successor inherited its predecessor's jurisdictional status following a de facto merger, despite the latter's survival: "To the extent the Successor Defendants argue successor liability pursuant to a de facto merger requires ILKB's dissolution, New York law holds otherwise." *Gould v. ILKB, LLC*, No. 20-cv-5154 (DRH) (JMW), 2022 U.S. Dist. LEXIS 103363, at *32 (E.D.N.Y. June 9, 2022) (citing *Holme v. Global Minerals & Metals Corp.*, 63 A.D.3d 417, 418 (1st Dep't 2009)); *see also Fitzgerald*, 286 A.D.2d at 575 ("So long as the acquired corporation is shorn of its assets and has become, in essence, a shell, legal dissolution is not necessary before a finding of a de facto merger will be made.") (citing *Ladenburg Thalmann & Co. v. Tim's Amusements, Inc.*, 275 A.D.2d 243, 248 (1st Dep't 2000)).

This is true in other situations, as well. For example, in a case with similar facts to those here, the New York County Supreme Court found jurisdiction inherited

where "[defendant] GemCap 1 filed for bankruptcy shortly after transferring its assets to" other defendants "to operate GemCap 1's business"—GemCap1 continued to exist, but the transfer was sufficient to show the other defendants "inherited GemCap 1's jurisdictional status." *Metro. Partners Fund IIIA, LP v. GemCap Lending I, LLC*, 2023 NY Slip Op 33042(U), ¶ 10 (Sup. Ct. N.Y. County Sept. 1, 2023). *See also Burgos v. Pulse Combustion*, 227 A.D.2d 295, 295-96 (1st Dep't 1996) (successor liability where successor "purchased *almost* all of the predecessor corporation's fixed assets and intangibles") (emphasis added). Courts have found the same for mere continuations. *See Societe Anonyme Dauphitex v. Schoenfelder Corp.*, No. 07-cv-489 (RWS), 2007 U.S. Dist. LEXIS 81496, at *17 (S.D.N.Y. Nov. 1, 2007) (finding a mere continuation under New York law where the predecessor survived and distinguishing *Schumacher*).

In *Stein*, North Carolina Supreme Court specifically rejected the argument that imputing contacts to a successor "to establish personal jurisdiction is inappropriate because they are not the corporate continuations or embodiments of [the predecessor], which continues to exist as its own entity." 879 S.E.2d at 545. The court explained:

> We decline to recognize mergers as the sole circumstance in which successor jurisdiction is appropriate. Such a holding would result in the very consequence described above: Companies could avoid liability for tortious conduct simply by forming a new, out-of-state company instead of effectuating a merger. Moreover, where, as here, a company has explicitly assumed certain liabilities or reorganized to avoid the very

> liability for which it is brought to court, requiring a merger or a corporate continuation to establish successor jurisdiction would serve no additional purpose.

Id. at 545-46.

In support of its non-existent "one and the same" rule, SGBL cites to a series of cases the Second Circuit already found unhelpful. *See* Br. at 31 (citing *Fla. Health Scis. Ctr., Inc.*, 2003 U.S. Dist. LEXIS 21502; *Abbacor*, 2001 U.S. Dist. LEXIS 13385, at *12; *Schenin v. Micro Copper Corp.*, 272 F. Supp. 523, 526 (S.D.N.Y. 1967)). The Second Circuit found that *Florida Health Sciences Center* in fact largely tracked the successor liability exceptions but left open the question of the exception at issue here. A421. It found *Abbacor* "not instructive here," A422, and that *Schenin* "sheds no more light on the validity of Plaintiffs' inherited-jurisdiction theory"; in fact, it "hesitate[d] to give much weight to *Schenin* or *Semenetz*'s citation to it," A423, as *Schenin* "appears to take a stricter view than do more recent decisions of when under New York law a corporation may be a successor for jurisdictional purposes," A424.

Again, courts widely agree that jurisdictional status is inherited where a successor acquires all of its predecessor's liabilities—this is the "great weight of persuasive authority" cited in *Madison Management Group*, 918 F.2d at 454. In their opening brief at 30-31, Plaintiffs provided cases stating as such under the laws of

Pennsylvania (*Simmers*), Virginia (*Crawford Harbor*), Michigan (*Jeffrey*), Maryland (*68th St. Site Work Grp*), Oklahoma (*Williams*), and North Carolina (*Synergy*).

But this list is only representative—"courts commonly impute a corporate predecessor's contacts to its successor in order to exercise personal jurisdiction over the successor," and "[t]hese cases typically recognize '[a] corporation's contacts with a forum may be imputed to its successor if forum law would hold the successor liable for the actions of its predecessor.'" *Ostrem v. Prideco Secure Loan Fund, LP*, 841 N.W.2d 882, 897 (Iowa 2014) (quoting *Williams*, 927 F.2d at 1132). An exhaustive list would be beyond the word limit available here. *See, e.g.*, *CenterPoint Energy, Inc. v. Superior Court*, 157 Cal. App. 4th 1101, 1120 (Cal. Ct. App. 2007) ("a California court will have personal jurisdiction over a successor company if (1) the court would have had personal jurisdiction over the predecessor, and (2) the successor company effectively assumed the subject liabilities of the predecessor.").

SGBL has identified no contrary cases. Thus, SGBL's rule that it asks this Court to "bless" would be the outlier position—but it has given no convincing reason to do so.

Finally, SGBL also argues that acquisition of liabilities cannot be enough for successor jurisdiction, because "[j]urisdiction does not travel with liabilities." Br. 24. But jurisdiction here is not predicated on whether SGBL is ultimately liable, but

whether it acquired all of the liabilities of LCB, of which the lawsuit at issue should be included.

In sum, while SGBL argues that "a party does not assume forum contacts just by assuming liabilities," Br. at 42 n.9, just about every court to consider the question has disagreed.

II. SGBL Fails to Explain Why Its View of Successor Jurisdiction Would Not Lead to the "Serious Abuse" Identified in *Lelchook*.

SGBL derides what it calls "Plaintiffs' fairness theory," arguing that "Plaintiffs' theory stumbles out of the gate," "Plaintiffs try to play up the equities" and "Plaintiffs [pay] lip service to fairness." Br. at 32, 35, 44. But the concern is not just Plaintiffs'—the Second Circuit warned that SGBL's urged rule "would allow [the same] 'serious abuse'" risked where corporations can evade a jurisdiction by arranging a merger elsewhere. A438 (quoting *U.S. Bank*, 916 F.3d at 156).

Indeed, SGBL goes to eyebrow-raising efforts to remove any reference to the Second Circuit's opinion from that section of its brief. Nor is the concern limited to the Second Circuit—as stated above, North Carolina's Supreme Court warned that "[c]ompanies could avoid liability for tortious conduct simply by forming a new, out-of-state company instead of effectuating a merger." *Stein*, 879 S.E.2d at 546. The Sixth Circuit, in finding successor jurisdiction after the express assumption of liabilities, noted "that a contrary result would allow corporations to immunize themselves by formalistically changing their titles." *Perry Drug Stores*, 93 F. App'x

at 681 (6th Cir. 2003) (internal quotation marks and citation omitted). The concern underlies the doctrine of successor jurisdiction.

A. "Serious Abuse" Is Not Allayed by Forcing Plaintiffs to Pursue SGBL in Lebanon

SGBL's counterargument is that Plaintiffs would not be prejudiced by limiting their New York suit to LCB, despite its admitted insolvency, because they could attempt to enforce a judgment against LCB on SGBL's assets in Lebanon (or in New York, although it is entirely unclear what or whose assets SGBL is referencing, Br. at 35). But requiring Plaintiffs to chase SGBL around the world is precisely the abuse that successor jurisdiction is meant to prevent. For example, New York law dictates that successors to de facto mergers—which, as stated above, can leave a surviving predecessor behind in the forum—inherit their predecessor's jurisdictional status; that is *because* plaintiffs with claims justiciable in New York should not have to chase the successor to a foreign forum. That includes enforcement—the Second Circuit's concern that SGBL's rule would result in a "serious abuse" was not limited to obtaining a judgment, which may or may not be enforceable abroad.

New York has "a very strong policy of assuring ready access to a forum for redress of injuries arising out of transactions spawned here." *Deutsche Bank Sec., Inc. v. Mont. Bd. of Invs.*, 7 N.Y.3d 65, 73 (2006). "Redress" means compensation, not a judgment against an "insolvent" bank with no incentive to interplead its successor and no capacity or incentive to pay a judgment and seek indemnification

from its successor. SGBL's rule would thus be fundamentally unfair. *See 3M v. Eco Chem, Inc.*, 757 F.2d 1256, 1263 (Fed. Cir. 1985) (finding successor jurisdiction because otherwise "the owners of the property could merely transfer legal ownership of the assets from one shell corporation to another in a different jurisdiction, putting a party whose initial suit satisfied the jurisdictional requirements to the immense burden of chasing the involved assets from courtroom to courtroom.").

Indeed, the United States itself has a strong interest in providing a forum for ATA cases and seeing judgments enforced: the ATA "evinces a clear congressional intent to deter and punish acts of international terrorism." *Estates of Ungar v. Palestinian Auth.*, 304 F. Supp. 2d 232, 238 (D.R.I. 2004). Deterrence necessitates ready enforcement. For this reason, it limits district courts' capacity to dismiss ATA cases on *forum non conveniens* grounds. 18 U.S.C. § 2334.

Thus, whether Lebanon provides an adequate forum for enforcement, as SGBL argues, is beside the point. It is also very much in doubt; SGBL never says whether Lebanon would enforce a judgment premised on a counterterrorism statute with trebled damages. Its cited cases, which arise under entirely different circumstances and do not involve judgment enforcement, do not suggest otherwise.[5]

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[5] In two, the plaintiffs had contractually consented to jurisdiction in Lebanon. *Du Quenoy v. Am. Univ. of Beirut*, No. 18-cv-6962 (ER), 2019 U.S. Dist. LEXIS 167165, at *20 (S.D.N.Y. Sep. 27, 2019); *Daou v. BLC Bank, S.A.L.*, No. 20-cv-4438 (DLC), 2021 U.S. Dist. LEXIS 69502, at *18 (S.D.N.Y. Apr. 9, 2021). In the third,

And here the issue is even more fraught, as the action is against SGBL, a bank embroiled in the country's economic collapse.[6]

SGBL also argues that the "abuse" the Second Circuit identified can be avoided by "pierc[ing] the corporate veil, including by treating two entities as alter egos of each other." Br. at 33. But that solves little: there is nothing inherently illegal about a corporation selling all of its assets and liabilities to another—but there are consequences. Piercing the corporate veil is not necessarily appropriate when one company acquires the liabilities of another, and an acquiror should only be held accountable for liabilities it agreed to take on in a legal acquisition.

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the court noted that Lebanon had the greater "interest in a dispute between Lebanese[-American] plaintiffs and Lebanese bank defendants regarding financial transactions that took place in Lebanon," not terrorism directed at Americans in Israel. *Elghossain v. Bank Audi S.A.L.*, No. 21-cv-2162 (PGG) (BCM), 2023 U.S. Dist. LEXIS 175684, at *23 (S.D.N.Y. Sep. 29, 2023).

[6] According to recent reporting: "As for [SGBL Chair Antoun] Sehnaou, who was fingered along with [former Central Bank of Lebanon governor and current fugitive from justice Riad] Salameh in the scheme that led to the collapse of Lebanon's economy and sued in the United States for money laundering to finance Hezbollah and Iranian terrorist operations, he is also facing criminal money laundering charges in Lebanon. SGBL's assets remain frozen." Duggan Flanakin, *Are Lebanese Banks Today's BCCI?*, The National Interest (Nov. 10, 2023), *available at* https://nationalinterest.org/blog/lebanon-watch/are-lebanese-banks-today's-bcci-207200. *See also* Press Release, U.S. Dep't of Treasury, *Joining Partners, U.S. Treasury Sanctions Former Central Bank Governor of Lebanon and Co-conspirators in International Corruption Scheme* (August 10, 2023) *available at* https://home.treasury.gov/news/press-releases/jy1687.

B. SGBL Is Not the Victim of LCB's Decision to Support Hezbollah

SGBL argues that *it* would be the one treated unfairly if it is made to account for the liabilities it willingly acquired in an action in this jurisdiction. It reasons that it was unforeseeable when it acquired all of LCB's liabilities in 2011 that it might be haled to New York to face claims like Plaintiffs'. It is hard to imagine why not—it expressly assumed "any and all of [LCB]'s liabilities and/or obligations and/or debts of any kind, character or description, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, determined, determinable or otherwise," A61, ¶ 2.3, and it certainly knew of LCB's massive support for Hezbollah—that was the conduct that precipitated the U.S. government's actions that provided the impetus for the acquisition. And Plaintiffs had *already* sued LCB in New York in 2008 for the same conduct and injuries alleged here. *Licci, et al. v. American Express Bank Ltd., et al.*, Index No. 109548/08 (N.Y. County) (the claims remained pending as of 2011). Moreover, by the June 2011 acquisition, numerous other suits against foreign financial institutions and other entities for supporting terrorism were pending in New York state and federal courts.[7]

[7] Cases include *Linde v. Arab Bank, Plc*, No. 04-cv-2799 (BMC) (PK) (E.D.N.Y.); *Weiss v. National Westminster Bank, Plc*, No. 05-cv-4622 (DLI) (RML) (E.D.N.Y); *Strauss v. Credit Lyonnais, S.A.*, No. 06-cv-702 (DLI) (RML) (E.D.N.Y.); *Goldberg v. UBS Ltd.*, No. 08-cv-375 (CPS) (E.D.N.Y.); *Wultz v. Bank of China Ltd.*, No. 11-cv-1266 (SAS) (S.D.N.Y. transferred in, Feb. 24, 2011).

What SGBL actually means is that it could not have foreseen the *precise legal claims* that happen to be asserted in this case, which are premised on JASTA, the 2016 amendment to the ATA (enacted in 1992). It concedes LCB was already facing ATA claims as of 2011 but argues that those claims "no longer stand" because they were dismissed—in 2019. Br. at 43. So, according to SGBL's reasoning, in 2011 it could not anticipate the 2016 addition of the JASTA amendment to the ATA, but it could anticipate (and rely on) the 2019 dismissal of Plaintiffs' prior ATA claims (Plaintiffs only chose not to appeal that dismissal because they correctly believed they had a successful ground to reverse dismissal of JASTA claims, *see Kaplan v. Lebanese Canadian Bank, SAL*, 999 F.3d 842, 853 (2d Cir. 2021)).

SGBL also argues that it could rely on the fact that "courts had rejected aiding-and-abetting claims under the ATA" in a 2008 decision from the Seventh Circuit (and a 2018 decision from the D.C. Circuit). This is further misdirection—the Seventh Circuit decision, *Boim v. Holy Land Foundation for Relief & Development*, held defendants *liable* under the ATA and merely rejected the framing of the claim as one for secondary liability. Instead, Judge Posner observed that "[p]rimary liability in the form of material support to terrorism has the character of secondary liability. Through a chain of incorporations by reference, Congress has expressly imposed liability on a class of aiders and abettors." 549 F.3d 685, 691-92 (7th Cir. 2008). If SGBL premised its valuation of LCB on *Boim*, it had every reason to expect LCB

would face ATA liability for similar conduct. SGBL's counsel was presumably equally aware of other ATA claims that were active as of 2011—including *Linde v. Arab Bank, PLC*, which had already survived motions to dismiss and later resulted in a jury verdict for plaintiffs on ATA claims against a foreign bank in 2014.

The Supreme Court of North Carolina rejected a similar argument. The defendants there claimed that the liabilities acquisition provision was broadly written (as the one here is) without specifying where they would be liable. The court pointed out that by that logic, it would be liable nowhere. Then it explained:

> Moreover, to reiterate what we have already explained, when companies undergo complicated transactions … they conduct extensive due diligence, and the new parties either are aware of, or should be aware of, the liabilities they might acquire. Old DuPont's PFAS liabilities were no secret—before the corporate reorganization, it had already paid millions in well-publicized fines and settlements. Corteva and New DuPont had ample notice then that they might become liable in any venue where Old DuPont acquired PFAS liability.

Stein, 879 S.E.2d at 547. *See also id.* at 546 ("Assuming certain liabilities or intentionally reorganizing to avoid them similarly requires a party to weigh the risks at hand and affirmatively decide whether to become legally responsible for them …."). SGBL conducted due diligence, as it itself asserted. Br. at 9-10.[8] Terrorism related lawsuits against banks and other entities were no secret.

[8] SGBL admits that it performed due diligence on LCB before acquiring it in order to point out that it excluded certain Hezbollah-linked accounts. Of course, that does not lessen the liabilities it chose to acquire from LCB—LCB's liability had

Alternatively, SGBL warns that finding successor jurisdiction will "be expensive" for corporate buyers: "To guard themselves against this risk, buyers may pay less or demand that sellers indemnify them for litigation costs." Br. at 45. Presumably, the marginal cost of litigating those liabilities in New York rather than in Lebanon pale in comparison to the scope of the liabilities themselves. But SGBL's "expense" argument is precisely why this Court should find successor jurisdiction here—corporate buyers already discount purchase prices by the cost of liabilities acquired, including contingent liabilities that may arise from inherited jurisdiction, which they may face in "many" states. *Stein*, 879 S.E.2d at 546. The Court should not let a buyer discount its purchase price by the risk of litigation in the United States, then evade that litigation when it happens to arise in New York.

SGBL's potential litigation costs, including in New York, are a consideration it made or should have made when acquiring all of LCB's liabilities, knowing that the U.S. government had found that LCB laundered funds for Hezbollah (and was sued in New York). Moreover, SGBL is already defending JASTA claims in New York—in the *Bartlett* decision referenced by the Second Circuit, A428-30, the Eastern District of New York found that the plaintiffs there plausibly alleged that SGBL aided and abetted hundreds of Hezbollah terrorist attacks based on its *own*

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already accrued when it performed millions of dollars' worth of money laundering services for Hezbollah. Whether SGBL ensured it did not accrue *future* liabilities for working with Hezbollah by excluding those accounts is not at issue here.

provision of assistance to Hezbollah from 2003-2011. *Bartlett v. Société Générale De Banque Au Liban Sal*, No. 19-cv-7 (CBA) (VMS), 2020 U.S. Dist. LEXIS 229921, at *33 (E.D.N.Y. Nov. 25, 2020) (listing SGBL's own alleged, U.S.-designated Hezbollah customers). *See also* Mem. & Order, *Bartlett*, ECF No. 291 (reaffirming that decision).

And SGBL will have to participate in discovery in this case, as—according to LCB's counsel—SGBL possesses all of LCB's relevant records. SGBL argues that its potential role in discovery is irrelevant to jurisdiction. Not so. As this Court explained in *Kreutter* (a case relied upon by SGBL), the fact that a person will have to participate in discovery whether it is a party or not lessens the "inequity" of including it as a party: "This case is a good example of why the [fiduciary shield] doctrine is not necessary to avoid inequitable results. Plaintiff has obtained jurisdiction over McFadden Oil and Downman will undoubtedly be its principal witness and will have to come to New York for that purpose." *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 471 (1988).

SGBL asserts that, "[a]s Plaintiffs concede, those records are likely 'protected by Lebanese bank secrecy.'" Br. at 37. SGBL knows that Plaintiffs do not concede any such thing—indeed, SGBL's arguments in *Bartlett* that its records were "protected by Lebanese bank secrecy" have been rejected by that court, *Bartlett v. Société Générale De Banque Au Liban Sal*, No. 19-cv-7 (CBA) (TAM), 2023 U.S.

Dist. LEXIS 56982, at *42 (E.D.N.Y. Mar. 31, 2023), a ruling SGBL chose not to challenge.

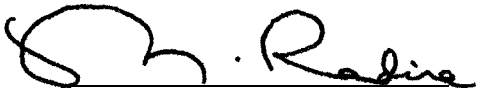
CONCLUSION

The Court should join the "many other courts that have decided this question" in favor of finding that a foreign corporation that acquires all of the assets and liabilities of its predecessor also inherits the predecessor's jurisdictional status.

Dated: December 8, 2023
New York, New York

Respectfully submitted,

OSEN LLC



Michael Radine
Gary M. Osen
Ari Ungar
Dina Gielchinsky
Aaron Schlanger
1441 Broadway
New York, New York 10018
Tel.: 212-354-0111

THE BERKMAN LAW OFFICE, LLC
Robert Tolchin
111 Livingston Street, Suite 1928
Brooklyn, New York 11201
Tel.: 718-855-3627

Attorneys for Plaintiffs-Appellants

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I hereby certify pursuant to 22 NYCRR § 500.13(c) that the foregoing brief was prepared on a computer.

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Dated: December 8, 2023
New York, New York

Respectfully submitted,

OSEN LLC

Michael Radine
1441 Broadway
New York, New York 10018
Tel.: 212-354-0111

Attorneys for Plaintiffs-Appellants