

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Leonard Stallone v. Home Depot U.S.A.

No. 2:24-cv-8005 (NJC) (ST), United States District Court for the Eastern District of New York (February 9, 2026)

SUMMARY

The court grants Plaintiff Leonard Stallone’s motion to join Peggy Van De Wetering as a defendant under 28 U.S.C. § 1447(e). Because Van De Wetering is a New York citizen and her joinder destroys complete diversity, the court remands the negligence action to the Supreme Court of the State of New York, Suffolk County.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Nusrat J. Choudhury
JURISDICTION	United States District Court for the Eastern District of New York
DECIDED	February 9, 2026
DOCKET	2:24-cv-8005 (NJC) (ST)
DISPOSITION	remanded
PROCEDURAL POSTURE	After removal from New York state court based on diversity jurisdiction, Plaintiff moved under 28 U.S.C. § 1447(e) to join a nondiverse defendant and, upon joinder, to remand the action to state court. The motion was unopposed.
STANDARD OF REVIEW	The court independently determined its subject matter jurisdiction. Permission to join a nondiverse defendant under 28 U.S.C. § 1447(e) is committed to the court's sound discretion and requires analysis of Rule 20 permissive joinder and fundamental fairness.
PRECEDENTIAL VALUE	Unpublished federal district court memorandum and order; generally nonprecedential.

TOPICS

- joinder
- subject matter jurisdiction
- civil procedure
- negligence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Peggy Van De Wetering could be joined as a defendant under Federal Rule of Civil Procedure 20 and 28 U.S.C. § 1447(e).
2. Whether joinder of Van De Wetering would destroy complete diversity of citizenship.
3. Whether joinder was consistent with fundamental fairness under the factors applied in the Second Circuit.
4. Whether the action should be remanded to state court after joinder of the nondiverse defendant.

HOLDINGS

1. Van De Wetering was a citizen of New York because the stipulated facts concerning her New York residence, voter registration, and other known facts established her domicile in New York.
2. Joinder was proper under Rule 20 because the claims against Van De Wetering and Home Depot arose from the same occurrence and involved common questions of law or fact.
3. Joinder was consistent with fundamental fairness because the delay was attributable to Home Depot's erroneous identification of the relevant entity, Home Depot would not be prejudiced, denial would risk duplicative litigation, and there was no evidence of an improper motive to destroy diversity.
4. The action had to be remanded because joinder of Van De Wetering destroyed complete diversity between Stallone and the defendants.

KEY QUOTATIONS

"[F]ailure of subject matter jurisdiction is not waivable and may be raised at any time by a party or by the court sua sponte."

"If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."

"The decision as to whether to permit the joinder of the additional parties is within the sound discretion of this Court."

"Generally speaking, unless a plaintiff seeks to add a non-diverse party solely to destroy the court's basis for diversity jurisdiction, the court is required if the [first three] factors are met to remand the action to state court."

FACTUAL BACKGROUND

Stallone alleged that he was injured after tripping over a watering hose operated by an employee associated with Ivy Acres, Inc., while on premises owned by Home Depot. Home Depot initially identified the operator as an employee of a New Jersey entity, but discovery revealed that the relevant entity was Ivy Acres, Inc., a New York corporation that had been dissolved before the accident. Peggy Van De Wetering, a New York citizen and vice

president of Ivy Acres, Inc., signed the services agreement under which the employee operated the hose. Stallone sought to add Van De Wetering as a defendant, which would destroy complete diversity.

PROCEDURAL HISTORY

Stallone filed a negligence action in the Supreme Court of the State of New York, Suffolk County, arising from an alleged trip over a watering hose on Home Depot premises. Home Depot removed the action to the Eastern District of New York on November 18, 2024, and the federal court previously found diversity jurisdiction based on the amount in controversy and the parties' citizenship. After discovery identified Peggy Van De Wetering as a potential defendant and established her New York citizenship, Stallone moved for joinder and remand. The court granted joinder and remanded the action under 28 U.S.C. § 1447(e).

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Clerk of Court was directed to remand the action to the Supreme Court of the State of New York, Suffolk County, pursuant to 28 U.S.C. § 1447(e).

CASES CITED

- Joseph v. Leavitt, 465 F.3d 87, 89 (2d Cir. 2006)
- Lyndonville Sav. Bank & Tr. Co. v. Lussier, 211 F.3d 697, 700 (2d Cir. 2000)
- Isaly v. Bos. Globe Media Partners, LLC, 650 F. Supp. 3d 106, 111, 114–15 (S.D.N.Y. 2023)
- Isaly v. Bos. Globe Media Partners, LLC, No. 23-67, 2023 WL 6439901 (2d Cir. Oct. 3, 2023)
- Platinum-Montaur Life Scis., LLC v. Navidea Biopharms., Inc., 943 F.3d 613, 617–18 (2d Cir. 2019)
- Tagger v. Strauss Grp. Ltd., 951 F.3d 124, 126 (2d Cir. 2020)
- Van Buskirk v. United Grp. of Cos., Inc., 935 F.3d 49, 53–54 (2d Cir. 2019)
- RainMakers Partners LLC v. NewSpring Cap., LLC, No. 23-cv-899, 2024 WL 1846321, at *2 n.1 (2d Cir. Apr. 29, 2024)
- Lever v. Lyons, No. 16-cv-5130, 2021 WL 302648, at *7 (E.D.N.Y. Jan. 28, 2021)
- Lawrence Moskowitz CLU Ltd. v. ALP, Inc., 830 F. App'x 50, 51 (2d Cir. 2020)
- Leifer v. JPMorgan Chase Bank, N.A., No. 18-cv-7477, 2020 WL 1130727, at *2 (S.D.N.Y. Mar. 9, 2020)
- Jerido v. Uber Techs., Inc., No. 22-cv-2217, 2022 WL 17986179, at *4–6 (S.D.N.Y. Dec. 29, 2022)
- Metro Kitchenworks Sales, LLC v. Continental Cabinets, LLC, 31 A.D.3d 722, 723 (2d Dep't 2006)