

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Metropolitan Partners Group Administration, LLC v. Nerney

2026 NY Slip Op 00091 · No. Index No. 650013/25; Appeal No. 4754; Case No. 2025-02963 · Decided January 13, 2026

SUMMARY

The Appellate Division, First Department dismissed as moot the appeal concerning disqualification of counsel because the attorney had withdrawn. It otherwise affirmed the denial of injunctive and protective relief, holding that the defendants had not properly raised the common-interest privilege and lacked a reasonable assurance of confidentiality for communications stored on Schweizer systems.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Scarpulla, J.P.; Friedman, J.; González, J.; Shulman, J.; Rosado, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	January 13, 2026
DOCKET	Index No. 650013/25; Appeal No. 4754; Case No. 2025-02963
DISPOSITION	other
PROCEDURAL POSTURE	Defendants Brian Nerney and David Horton appealed from an order denying their motion to disqualify counsel for Schweizer RSG, LLC and their requests for injunctive and protective relief concerning alleged privileged information.
PRECEDENTIAL VALUE	Published
PARTIES	Brian Nerney, David Horton v. Metropolitan Partners Group Administration, LLC, Metropolitan Levered Partners Fund VII, LP, Metropolitan Partners Fund VII, LP

TOPICS

- mootness
- appellate procedure
- attorney client privilege
- injunctions
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the appeal concerning disqualification of Schweizer RSG's counsel was moot after that counsel withdrew.
2. Whether the Individual Defendants were entitled to injunctive or protective relief barring plaintiffs from using or disclosing alleged privileged information stored on Schweizer systems and in Schweizer files.
3. Whether the Individual Defendants could rely on the common-interest privilege when they raised it for the first time in reply.

HOLDINGS

1. The portion of the appeal challenging denial of disqualification was moot because the challenged attorney had withdrawn as Schweizer RSG's counsel.
2. The Individual Defendants were not entitled to a temporary restraining order, preliminary injunction, or protective order preventing plaintiffs from using or disclosing the alleged privileged information.
3. The court would not consider the Individual Defendants' common-interest privilege argument because they asserted the privilege for the first time in reply.

KEY QUOTATIONS

*“Furthermore, neither injunctive relief nor a protective order is warranted to prevent plaintiffs from using or disclosing the Individual Defendants' alleged privileged information, which is purportedly saved on Schweizer laptops and in Schweizer's client files with third-party vendors.” (*1)*

*“In any event, the Individual Defendants had no "reasonable assurance of confidentiality" in any communications stored on Schweizer systems because there is a clear disclaimer of privacy in the Schweizer employee manual.” (*1)*

FACTUAL BACKGROUND

The Individual Defendants sought to prevent plaintiffs from using or disclosing alleged privileged communications stored on Schweizer RSG's laptops and in Schweizer's client files maintained by third-party vendors. The communications were stored on Schweizer systems governed by an employee manual containing a clear disclaimer of privacy. The Individual Defendants also knew that plaintiffs could appoint a receiver and seize collateral, including Schweizer laptops and other Schweizer documents.

PROCEDURAL HISTORY

Supreme Court, New York County, denied the Individual Defendants' motion to disqualify Jonathan A. Sorkowitz and their requests for a temporary restraining order, preliminary injunction, and protective order. On appeal, the parties stipulated that the disqualification issue was moot because Sorkowitz had withdrawn as Schweizer's counsel. The Appellate Division dismissed that portion of the appeal as moot and affirmed the order in all other respects.

DISPOSITION

other

CASES CITED

- Peerenboom v. Marvel Entertainment, LLC, 148 A.D.3d 531, 531-532 (1st Dep't 2017)

OPINION

PER CURIAM.

Metropolitan Partners Group Admin., LLC v Nerney (2026 NY Slip Op 00091) Metropolitan Partners Group Admin., LLC v Nerney 2026 NY Slip Op 00091 Decided on January 13, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: January 13, 2026 Before: Scarpulla, J.P. SEQ CHAPTER \h \r 1, Friedman, González, Shulman, Rosado, JJ. Index No. 650013/25|Appeal No. 4754|Case No. 2025-02963|[*1]Metropolitan Partners Group Administration, LLC, et al., Respondents, v Brian Nerney et al., Appellants, Schweizer RSG, LLC, Defendant-Respondent, RSG Schweizer Investors, LLC, et al., Defendants.

Frost Brown Todd, New York (Michael P. Richter of counsel), for appellants. Spiro Harrison & Nelson LLC, New York (Evan Bianchi of counsel), for Schweizer Nerney, respondent. Elsberg Baker & Maruri PLLC, New York (Michael Duke of counsel), for Metropolitan Partners Group Administration, LLC, Metropolitan Levered Partners Fund VII, LP and Metropolitan Partners Fund VII, LP, respondents.

Appeal from order, Supreme Court, New York County (Melissa A. Crane, J.), entered on or about April 16, 2025, which denied defendants Brian Nerney's and David Horton's (the Individual Defendants) motion to disqualify Jonathan A. Sorkowitz as counsel for defendant Schweizer RSG, LLC and their request for a temporary restraining order and preliminary injunction under CPLR 6301 and/or a protective order under CPLR 3103(c) prohibiting plaintiffs from using or disclosing the Individual Defendants' privileged information, unanimously dismissed with respect to the issue of disqualification, as moot, and the order otherwise affirmed, without costs.

The parties have stipulated to the fact that the portion of the Individual Defendants' appeal seeking reversal of the Supreme Court's denial of their request to disqualify Mr. Sorkowitz as counsel for Schweizer is moot because Mr. Sorkowitz has since withdrawn as counsel for Schweizer. Furthermore, neither injunctive relief nor a protective order is warranted to prevent plaintiffs from

using or disclosing the Individual Defendants' alleged privileged information, which is purportedly saved on Schweizer laptops and in Schweizer's client files with third-party vendors.

In support of their claims, the Individual Defendants rely on the common-interest privilege, but as they assert that privilege for the first time on reply, it is not properly before us, and we do not consider it. In any event, the Individual Defendants had no "reasonable assurance of confidentiality" in any communications stored on Schweizer systems because there is a clear disclaimer of privacy in the Schweizer employee manual.

Further, the Individual Defendants knew about plaintiffs' ability to appoint a receiver and seize collateral, including their Schweizer laptops and any other documents belonging to Schweizer (see *Peerenboom v Marvel Entertainment, LLC*, 148 AD3d 531, 531-532 [1st Dept 2017]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 13, 2026

PER CURIAM.

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the Individual Defendants' privileged information, unanimously dismissed with respect to the issue of disqualification, as moot, and the order otherwise affirmed, without costs.

The parties have stipulated to the fact that the portion of the Individual Defendants' appeal seeking reversal of the Supreme Court's denial of their request to disqualify Mr. Sorkowitz as counsel for Schweizer is moot because Mr. Sorkowitz has since withdrawn as counsel for Schweizer. Furthermore, neither injunctive relief nor a protective order is warranted to prevent plaintiffs from using or disclosing the Individual Defendants' alleged privileged information, which is purportedly saved on Schweizer laptops and in Schweizer's client files with third-party vendors.

In support of their claims, the Individual Defendants rely on the common-interest privilege, but as they assert that privilege for the first time on reply, it is not properly before us, and we do not consider it. In any event, the Individual Defendants had no "reasonable assurance of confidentiality" in any communications stored on Schweizer systems because there is a clear disclaimer of privacy in the Schweizer employee manual.

Further, the Individual Defendants knew about plaintiffs' ability to appoint a receiver and seize collateral, including their Schweizer laptops and any other documents belonging to Schweizer (see *Peerenboom v Marvel Entertainment, LLC*, 148 AD3d 531, 531-532 [1st Dept 2017]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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