

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 _____
4
5 August Term, 2021

6
7 (Argued: January 12, 2022

Decided: August 23, 2022)

8
9 Docket No. 21-664-cv
10

11 _____
12
13 V&A COLLECTION, LLC,

14
15 *Plaintiff-Appellant,*

16
17 v.

18
19 GUZZINI PROPERTIES LTD.,

20
21 *Defendant-Appellee.*
22

23 _____
24
25 Before: POOLER, CHIN and CARNEY, *Circuit Judges.*
26

27 Art dealer Inigo Philbrick sold V&A Collection, LLC an ownership interest
28 in an artwork by Wade Guyton (the “Guyton”). In a second transaction, made
29 without V&A’s knowledge or participation, Guzzini Properties Ltd. purchased
30 the Guyton, an artwork by Rudolf Stingel (the “Stingel”), and a third painting

1 from an entity controlled by Philbrick. In 2019, Guzzini brought an in rem action
2 to quiet title to the Stingel in New York Supreme Court. V&A attempted to
3 intervene in that action to litigate its claims to the Guyton. The state court denied
4 the motion to intervene, and V&A commenced a separate action against Guzzini
5 for conversion, based on Guzzini's interference with V&A's ownership of the
6 Guyton.

7 Guzzini removed the second action to federal court, and then moved to
8 dismiss, in relevant part, for lack of personal jurisdiction. V&A argued that by
9 suing to quiet title to the Stingel in New York state court, Guzzini consented to
10 submit to the jurisdiction of New York courts for all claims arising out of the
11 same agreement, including its claims regarding the Guyton. The district court
12 (Failla, J.) found that because the two lawsuits did not arise out of the same
13 transaction, Guzzini did not implicitly consent to litigating the dispute over the
14 Guyton in New York. *V&A Collection, LLC v. Guzzini Props., Ltd.*, No. 20-cv-1797,
15 2021 WL 982461, at *6 (S.D.N.Y. Mar. 15, 2021).

16 Affirmed.

17

18 _____
19 JUDD GROSSMAN, Grossman LLP, New York, N.Y.,
for Appellant V&A Collection, LLC.

1 NINA EDELMAN, Mazzola Lindstrom LLP (Wendy J.
2 Lindstrom, Jean-Claude Mazzola, *on the brief*), New
3 York, N.Y., *for Appellee Guzzini Properties Ltd.*
4

5 POOLER, *Circuit Judge*:

6 Art dealer Inigo Philbrick sold V&A Collection, LLC an ownership interest
7 in an artwork by Wade Guyton (the “Guyton”). In a second transaction, made
8 without V&A’s knowledge or participation, Guzzini Properties Ltd. purchased
9 the Guyton, an artwork by Rudolf Stingel (the “Stingel”), and a third painting
10 from Inigo Philbrick Limited (“IPL”), an entity controlled by Philbrick. In 2019,
11 Guzzini brought an in rem action to quiet title to the Stingel in New York State
12 Supreme Court. V&A attempted to intervene in that action to litigate its claims to
13 the Guyton. The state court denied the motion to intervene, and V&A
14 commenced a separate action against Guzzini for conversion, based on Guzzini’s
15 interference with V&A’s ownership of the Guyton.

16 Guzzini removed the action to federal court, and then moved to dismiss, in
17 relevant part, for lack of personal jurisdiction. V&A argued that by suing to quiet
18 title to the Stingel in New York state court, Guzzini consented to submit to the
19 jurisdiction of New York courts for all claims arising out of the same agreement
20 with IPL, including its claims regarding the Guyton. The district court (Failla, J.)

1 found that because the two lawsuits did not arise out of the same transaction,
2 Guzzini did not implicitly consent to litigating the dispute over the Guyton in
3 New York. *V&A Collection, LLC v. Guzzini Properties, Ltd.*, No. 20-cv-1797, 2021
4 WL 982461, at *6 (S.D.N.Y. Mar. 15, 2021). We find no basis for jurisdiction over
5 Guzzini based on implicit consent or otherwise, and we therefore affirm.

6 BACKGROUND

7 This case concerns the ownership of a piece of artwork by Guyton entitled
8 *Flaming "U"* that disgraced art dealer Inigo Philbrick¹ allegedly sold to both V&A
9 and Guzzini. In July 2013 V&A purchased a 50 percent interest in the Guyton
10 from Modern Collections, a London art dealer. Modern Collection retained a 50
11 percent interest in the work. In addition to receiving a 50 percent interest in the
12 Guyton, V&A was to receive an additional \$350,000 in cash in exchange for a
13 different work V&A had purchased from Modern Collections the year before.
14 V&A and Modern Collections further agreed that upon any later sale of the

¹ After pleading guilty to fraud and agreeing to forfeit \$86 million, Philbrick was sentenced to seven years' imprisonment in May 2022. Colin Moynihan, *Art Dealer Sentenced to 7 Years in \$86 Million Fraud Scheme*, N.Y. Times (May 23, 2022), <https://www.nytimes.com/2022/05/23/arts/inigo-philbrick-art-dealer-sentenced-prison.html>; see also *United States v. Philbrick*, No. 20-cr-351-SHS-1 (S.D.N.Y. May 25, 2022), ECF No. 67.

1 Guyton, V&A would receive \$850,000, Modern Collection would receive
2 \$700,000, and the two would split any profit over and above those amounts.
3 Philbrick represented Modern Collections in the transaction, and was one of its
4 principals. V&A did not authorize any sale or other disposition of its interest in
5 the Guyton.

6 In June 2017, IPL, an entity controlled by Philbrick, entered into a purchase
7 and sale agreement with Guzzini for three pieces of art, including the Guyton,
8 for \$6 million (the “June 2017 Agreement”). As relevant here, that agreement
9 provided that: “[t]he Seller has agreed to sell the Artworks [] and [Guzzini] has
10 agreed to purchase the Artworks upon the terms and conditions set out in this
11 Agreement.” App’x at 83. It also warranted that: “[t]he Seller has full legal and
12 beneficial title to the Artworks and is entitled without further action to transfer
13 the legal and beneficial title in the Artworks to the Buyer on the terms of this
14 Agreement without the consent of any third party.” App’x at 85 ¶ 4.1.1. The
15 seller held a buyback option through August 2018. App’x at 86 ¶¶ 5.1-5.6. That
16 buyback option was extended in exchange for additional fees, with the other
17 terms of the June 2017 Agreement remaining in effect.

1 V&A alleges that while Guzzini styles the June 2017 Agreement as a sale,
2 “the face of the governing agreement makes clear [that] Guzzini was *loaning* \$6
3 million to IPL, and in return IPL purported to pledge the three artworks,
4 including the Guyton and the Stingel, as collateral.” App’x at 16. V&A notes that
5 the agreement values the artwork at \$25 million for insurance purposes, despite
6 the \$6 million purchase price. V&A alleges that on learning of Guzzini’s claim to
7 the Guyton in October 2019, it immediately notified Guzzini of its ownership
8 interest.

9 Guzzini declined to recognize V&A’s ownership interests. V&A alleges
10 that Guzzini initially represented that it had physical custody of the Guyton, but
11 during the course of this litigation revealed that it transferred ownership of the
12 Guyton on November 1, 2019. The Guyton is now owned by non-party Lanark
13 Services Ltd. and at all times relevant has been located in Switzerland.

14 Separately, a dispute arose as to the ownership of the Stingel, an artwork
15 entitled *Picasso* that Guzzini also purchased under the June 2017 Agreement.
16 Guzzini brought an in rem action in New York Supreme Court, New York
17 County, in Fall 2019 to quiet title to the Stingel (the “Stingel Action”). *See Guzzini*
18 *Props. Ltd. v. “Untitled by Rudolf Stingel, 2012,” in Rem*, Index No. 656467/2019

1 (N.Y. Sup. Ct. filed Oct. 30, 2019). According to Guzzini, it brought the in rem
2 action in New York state court because that is where the Stingel was located.

3 V&A moved to intervene in that action and sought an injunction barring
4 Guzzini from selling, transferring, or otherwise disposing of the Guyton work
5 while the issue of ownership was being litigated. New York Supreme Court
6 denied the motion to intervene on the ground that V&A's claims did not concern
7 the Stingel painting. [JA 129:18-25] The state court urged V&A to file a separate
8 action regarding the Guyton and noted that it would be "willing to consider [that
9 action as] a related action and defer for now on whether [the actions could be]
10 consolidated for discovery or more broadly." App'x at 126.

11 V&A then filed its own action in state court alleging conversion, which
12 Guzzini timely removed to federal court on the basis of diversity jurisdiction.
13 V&A is a New York limited liability company. Guzzini is a company registered
14 in the British Virgin Islands, with a principal place of business in London. V&A
15 alleged that Guzzini consented to jurisdiction in New York, noting that Guzzini
16 claimed to have acquired title to both the Stingel and the Guyton under the June
17 2017 Agreement. By bringing the Stingel Action in New York, V&A alleged,
18 "Guzzini has consented to this Court's jurisdiction to adjudicate its rights under

1 the [June 2017 Agreement]—the very same contract under which Guzzini claims
2 to have purchased the Guyton artwork at issue in this dispute.” App’x at 15.

3 Guzzini sought a conference in district court regarding its proposed
4 motion to dismiss the complaint for lack of personal jurisdiction, and the district
5 court permitted the parties to engage in limited jurisdictional discovery. Guzzini
6 then moved to dismiss, arguing that (1) the court lacked specific personal
7 jurisdiction over it; (2) the doctrine of forum non conveniens mandated
8 dismissal; (3) V&A failed to state a claim for conversion; and (4) the district court
9 could not exercise equity jurisdiction. The district court concluded it lacked
10 personal jurisdiction over Guzzini and declined to consider the alternative
11 grounds for dismissal. *V&A Collection*, 2021 WL 982461, at *3, *7. This appeal
12 followed.

13 DISCUSSION

14 V&A argues that the district court erred when it concluded that in
15 bringing an in rem action to quiet title to the Stingel, Guzzini did not consent to
16 the jurisdiction of New York courts for the purpose of litigating the ownership of
17 the Guyton. V&A alleges that both paintings were involved in the June 2017
18 Agreement, such that both the Stingel Action and this action arise out of the

1 same transaction. Thus, by bringing its in rem suit to quiet title to the Stingel in
2 New York, V&A argues that Guzzini consented to New York courts exercising
3 personal jurisdiction over it in this litigation regarding ownership of the Guyton.

4 We review the dismissal of a complaint for lack of personal jurisdiction de
5 novo. *Charles Schwab Corp. v. Bank of Am. Corp.*, 883 F.3d 68, 81 (2d Cir. 2018).

6 “Where, as here, a court relies on pleadings and affidavits, . . . the plaintiff need
7 only make a prima facie showing that the court possesses personal jurisdiction
8 over the defendant. We construe the pleadings and affidavits in the light most
9 favorable to [the plaintiff], resolving all doubts in [its] favor.” *DiStefano v. Carozzi*
10 *N. Am., Inc.*, 286 F.3d 81, 84 (2d Cir. 2001) (citation omitted).

11 Unlike subject matter jurisdiction, “[t]he requirement that a court have
12 personal jurisdiction flows not from Art. III, but from the Due Process Clause.”
13 *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702
14 (1982). “The personal jurisdiction requirement recognizes and protects an
15 individual liberty interest.” *Id.* As an individual right, personal jurisdiction, “like
16 other such rights, [may] be waived.” *Id.* at 703. “A variety of legal arrangements
17 have been taken to represent express or implied consent to the personal
18 jurisdiction of the court.” *Id.* at 703–04 (collecting cases). In addition, “[t]he

1 actions of the defendant may amount to a legal submission to the jurisdiction of
2 the court, whether voluntary or not." *Id.* at 704–05. With a few exceptions,
3 however, "[a] party's consent to jurisdiction in one case [] extends to that case
4 alone. It in no way opens that party up to other lawsuits in the same jurisdiction
5 in which consent was given, where the party does not consent and no other
6 jurisdictional basis is available." *Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 50
7 n.5 (2d Cir. 1991).

8 One exception arises in the context of counterclaims, where a plaintiff
9 bringing suit in a forum "submit[s] itself to the jurisdiction of the court with
10 respect to all the issues embraced in the suit, including those pertaining to the
11 counterclaim of the defendants." *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S.
12 448, 451 (1932). As the Supreme Court observed in *Adam v. Saenger*:

13 The plaintiff having, by his voluntary act in demanding
14 justice from the defendant, submitted himself to the
15 jurisdiction of the court, there is nothing arbitrary or
16 unreasonable in treating him as being there for all
17 purposes for which justice to the defendant requires his
18 presence. It is the price which the state may exact as the
19 condition of opening its courts to the plaintiff.

20
21 303 U.S. 59, 67-68 (1938); *see also Grupke v. Linda Lori Sportswear*, 174 F.R.D. 15, 17
22 (E.D.N.Y. 1997) ("In the vast majority of cases a plaintiff, by virtue of bringing

1 suit, waives venue and personal jurisdiction objections to a defendant's
2 counterclaims.").

3 The First Circuit has expanded that rule to extend consent jurisdiction to
4 other lawsuits in the same forum arising out of the same transaction or
5 occurrence. *See Gen. Contracting & Trading Co. v. Interpole, Inc.*, 940 F.2d 20 (1st
6 Cir. 1991). Interpole, a third-party plaintiff, obtained a default judgment against
7 Trastco, a third-party defendant. *Id.* at 21. Trastco then moved to vacate the
8 default judgment for lack of personal jurisdiction, but at the same time
9 commenced its own separate action against Interpole in the same court. *Id.* at 21-
10 22. By doing so, the First Circuit held, "Trastco surrendered any jurisdictional
11 objections to claims that Interpole wished to assert against it in consequence of
12 the same transaction or arising out of the same nucleus of operative facts." *Id.* at
13 23. *Interpole* thus adopted "an affirmative relief rule, specifying that personal
14 jurisdiction exists where a defendant also independently seeks *affirmative* relief in
15 a separate action before the same court concerning the same transaction or
16 occurrence." *Dow Chem. Co. v. Calderon*, 422 F.3d 827, 834 (9th Cir. 2005); *see also*
17 *Neuralstem, Inc. v. StemCells, Inc.*, 573 F. Supp. 2d 888, 897 (D. Md. 2008) (finding

1 consent jurisdiction where defendant commenced an action involving the same
2 parties and related to the same transaction as the second action).

3 V&A urges that we adopt *Interpole* and find the exercise of jurisdiction
4 proper here. But *Interpole's* rationale does not apply here. This case concerns a
5 dispute as to the ownership of the Guyton between V&A and Guzzini. At all
6 times relevant to this litigation, the Guyton has been located in Switzerland. The
7 state court case concerns the ownership of the Stingel, which is located in New
8 York. The location of the Stingel dictated the forum of Guzzini's in rem action.
9 *See, e.g., Ward v. Boyce*, 152 N.Y. 191, 196, 46 N.E. 180, 181 (1897) (for a proceeding
10 in rem, property must be located within the jurisdiction); 29 N.Y. Jur. 2d *Courts &*
11 *Judges* § 669 (discussing location of subject matter or res). V&A alleges no
12 ownership interest in the Stingel, and Guzzini did not name V&A as a party in
13 that action. Accordingly, Guzzini's consent to jurisdiction in New York for
14 purposes of the state in rem action does not extend that consent to other lawsuits.
15 *See Klinghoffer*, 937 F.2d 44, 50 n.5. V&A alleges no other basis for the exercise of
16 personal jurisdiction.

17 We therefore need not decide whether to adopt *Interpole*, which would not
18 apply here in any event. The Stingel Action involves different parties and an

1 ownership dispute involving a different piece of artwork. Guzzini’s consent to
2 jurisdiction in New York for purposes of the state in rem action does not open it
3 up to other lawsuits. *See Klinghoffer*, 937 F.2d 44, 50 n.5.

4 And despite V&A’s argument to the contrary, this lawsuit does not arise
5 out of the same transaction as the Stingel Action. V&A argues that because both
6 the Guyton and Stingel were allegedly sold in the June 2017 Agreement, this
7 litigation and the state court in rem action to quiet title arise out of the same
8 transaction. It contends that “[t]he threshold—and potentially dispositive—legal
9 issue to be decided in both cases is whether Guzzini obtained title to the
10 artworks under the single” June 2017 Agreement. Appellant’s Reply Br. at 1.

11 We disagree. The enforceability of the June 2017 Agreement may be
12 dispositive in the Stingel Action, which seeks to establish who rightfully owns
13 the Stingel.² But resolution of that question is not dispositive here. In the Stingel
14 Action, the only issue to be settled is who owns the Stingel. Assuming Guzzini is
15 unsuccessful in the Stingel Action, the issue of whether Guzzini improperly
16 converted the Guyton would remain unresolved.

² As of the date of the filing of this opinion, the state court action remains open, with the issue of who owns the Stingel unresolved.

1 Under New York law, “conversion is the unauthorized assumption and
2 exercise of the right of ownership over goods belonging to another to the
3 exclusion of the owner’s rights.” *Thyroff v. Nationwide Mut. Ins. Co.*, 460 F.3d 400,
4 403–04 (2d Cir. 2006) (alteration and internal quotation marks omitted). “To state
5 a claim of conversion, the plaintiff must allege that (1) the party charged has
6 acted without authorization, and (2) exercised dominion or a right of ownership
7 over property belonging to another, (3) the rightful owner makes a demand for
8 the property, and (4) the demand for the return is refused.” *Lefkowitz v. Bank of*
9 *N.Y.*, 676 F. Supp. 2d 229, 251 (S.D.N.Y. 2009) (internal brackets and quotation
10 marks omitted); *see also Colavito v. N.Y. Organ Donor Network, Inc.* 8 N.Y.3d 43, 50
11 (2006) (“A conversion takes place when someone, intentionally and without
12 authority, assumes or exercises control over personal property belonging to
13 someone else, interfering with that person’s right of possession .”).

14 “Two key elements of conversion are (1) plaintiff’s possessory right or
15 interest in the property and (2) defendant’s dominion over the property or
16 interference with it, in derogation of plaintiff’s rights.” *Colavito*, 8 N.Y.3d 49–50
17 (2006) (citation omitted). A wrongful intent is not required to prove a conversion
18 claim, *Key Bank of N.Y. v. Grossi*, 642 N.Y.S.2d 403, 404 (3d Dept. 1996), such that a

1 party may be liable for conversion even if it acted in good faith, and without
2 knowledge of the plaintiff's claim on the property, *see, e.g., Wright v. Bank of*
3 *Metropolis*, 110 N.Y. 237, 247–49 (1888); *Boyce v. Brockway*, 31 N.Y. 490, 493–94
4 (1865). A defendant who came into possession of the property lawfully can still
5 be held liable for conversion if the defendant knew the transfer would violate the
6 superior property rights of another, yet disposed of the property anyway. *See Key*
7 *Bank*, 642 N.Y.S. at 405.

8 V&A's conversion claim is premised on its assertion that it has "a
9 possessory right to and at least a 50% ownership interest in the Guyton." App'x
10 at 17 ¶ 29. It alleges that it learned of Guzzini's ownership claim in October 2019,
11 and informed Guzzini then of its competing claim. V&A alleges that it
12 demanded Guzzini return the Guyton, and Guzzini refused. Each of these
13 assertions, if satisfactorily established, could allow V&A to prevail on its
14 conversion claim regardless of the outcome of the state court action. Even if the
15 state court declares the June 2017 Agreement void, that would not settle the
16 question of whether V&A had a "possessory right or interest in the property."
17 *Colavito*, 8 N.Y.3d at 50. As the district court aptly noted, "[t]he particular
18 concerns about symmetry and justice that drove the decisions in *Interpol[e]* and

1 its progeny are not present in this case." *V&A Collection*, 2021 WL 982461 at * 6.
2 To bring its claim, V&A must find a court able to exercise jurisdiction over
3 Guzzini.

4 **CONCLUSION**

5 For the reasons given above, we affirm.