

Dawidoicz v Forgione

2025 NY Slip Op 32629(U)

June 30, 2025

Supreme Court, New York County

Docket Number: Index No. 805286/2024

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY **PART** **56M**

Justice

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ANN MARIE DAWIDOICZ, as Executor of the Estate of
MARIE PIRO, Deceased,

Plaintiff,

INDEX NO. 805286/2024

MOTION DATE 04/11/2025

MOTION SEQ. NO. 001

- v -

JOSEPH FORGIONE, M.D., PETER SALGO, M.D., YURI
NOVITSKY, M.D., and NEW YORK-PRESBYTERIAN/
COLUMBIA UNIVERSITY IRVING MEDICAL CENTER

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18,
19, 20, 21, 22, 25, 33, 34, 36, 37, 38

were read on this motion to/for DISMISS.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, negligent hiring, training, supervision, and retention of health-care personnel, and wrongful death, the defendant Joseph Forgione, M.D., moves pursuant to CPLR 3211(a)(8) and 302 to dismiss the complaint insofar as asserted against him for lack of personal long-arm jurisdiction. The plaintiff opposes the motion only to the extent of contending that the dismissal should be without prejudice to her commencement of a new action against Forgione based on the same facts in a proper jurisdiction. The defendants Peter Salgo, M.D., Yuri Novitsky, M.D., and New York-Presbyterian/Columbia University Irving Medical Center (collectively the NYPH defendants) also oppose the motion. The motion is granted, and the complaint is dismissed insofar as asserted against Forgione, without prejudice to the plaintiff's commencement of a new action against him,

in a proper jurisdiction and forum, based on the same facts as alleged against him in this action, subject to the limitations period applicable to claims litigated in said jurisdiction and forum.

Forgione established that he resides and practices medicine in the State of New Jersey, that he committed no relevant acts or omissions in New York, and that he has no other contacts with or presence in New York that would subject him to the jurisdiction of the courts of the State of New York. In a stipulation dated February 25, 2025, signed by counsel for both the plaintiff and Forgione, the plaintiff agreed to discontinue this action against him without prejudice. The NYPH defendants, however, refused to sign the stipulation. CPLR 3217(a)(2) requires that a stipulation of discontinuance, to be valid and effective without judicial intervention, must be executed by all parties, even where the plaintiffs seek to discontinue the action against fewer than all of the defendants (*see Phillips v Trommel Constr.*, 101 AD3d 1097 [2d Dept 2012]; *C.W. Brown, Inc. v HCE, Inc.*, 8 AD3d 520 [2d Dept 2004]; *Dickson v Eagle Team Dev.*, 2020 NY Slip Op 31893[U], *9 [Sup Ct, N.Y. County, Jun. 18, 2020]). Nonetheless,

“CPLR 3217(b) authorizes a court to grant a motion for voluntary discontinuance ‘upon terms and conditions, as the court deems proper.’ While the determination upon such an application is generally within the sound discretion of the court (*see Tucker v Tucker*, 55 NY2d 378, 383 [1982]), a party ordinarily cannot be compelled to litigate and, absent special circumstances, such as prejudice to adverse parties, a discontinuance should be granted”

(*Bank of Am., N.A. v Douglas*, 110 AD3d 452, 452 [1st Dept 2013]; *see Burnham Serv. Corp. v National Council on Compensation Ins.*, 288 AD2d 31 [1st Dept 2001]). Alternatively, the party against whom a plaintiff wishes to discontinue the action may, as here, move to dismiss the complaint insofar as asserted against him or her on other grounds (*see generally Diraffaele v Mir*, 2016 NY Slip Op 32898[U], *5, 2016 NY Misc LEXIS 5299, *8 [Sup Ct, Suffolk County, Sep. 27, 2016] [where complaint was dismissed on defendants’ motion pursuant to CPLR 3217(b), request for dismissal on other grounds was rendered academic]).

Forgione demonstrated that New York courts have neither general, all-purpose jurisdiction over him, since he does not have sufficient contacts with or a sufficient presence in

New York (see CPLR 301; *Aybar v Aybar*, 169 AD3d 137, 142-143 [2d Dept 2019]; see also *Daimler AG v Bauman*, 571 US 117, 122, 127 [2014]; *Rushaid v. Pictet & Cie*, 28 NY3d 316, 323 n 4 [2016]; *Ingraham v Carroll*, 90 NY2d 592, 597 [1997]; *Landoil Resources Corp. v Alexander & Alexander Servs., Inc.*, 77 NY2d 28, 33 [1990]; *Banco Ambrosiano, S.p.A. v Artoc Bank & Trust, Ltd.*, 62 NY2d 65, 71 [1984]), nor do the courts have “specific” personal jurisdiction over him, since he did not “transact[] any business within the state or contract[] anywhere to supply goods or services in the state” (CPLR 302[a][1]; see *D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292 [2017]; *Paterno v Laser Spine Inst.*, 24 NY3d 370, 377 [2014]), and the plaintiff’s cause of action against him did not ‘[arise] from’ such a business transaction” (*Best Van Lines, Inc. v Walker*, 490 F3d 239, 246 [2d Cir 2007]; see *Deutsche Bank Sec., Inc. v Montana Bd. of Invs.*, 7 NY3d 65, 71 [2006]). In opposition, the plaintiff conceded that this court lacks personal, longarm jurisdiction over Forgione. Inasmuch as the NYPH defendants did not assert any cross claims against Forgione, his motion seeking to dismiss the complaint insofar as asserted against him did not seek relief against them. Hence, the NYPH defendants lack standing to oppose the motion, and will not be aggrieved by any order disposing of this motion (see *Lopez v. Philip Ross Indus., Inc.*, 2025 NY Slip Op 50799[U], *4, 2025 NY Misc LEXIS 4236, *8 [Sup Ct, Nassau County, May 16, 2025]; *Pianin v Altorki*, 2022 NY Misc LEXIS 37682, *22 [Sup Ct, N.Y. County, May 17, 2022] [Kelley, J.]; see also *Augustine v Halcyon Constr. Corp.*, 71 Misc 3d 715, 716-717 [Sup Ct, Bronx County 2021]; cf. *Mixon v TBV, Inc.*, 76 AD3d 144, 149 [2d Dept 2010] [defining “aggrievement” for appellate purposes]), and the papers that they submitted need not be considered in deciding the issue before the court.

Accordingly, it is,

ORDERED that the motion of the defendant Joseph Forgione, M.D., to dismiss the complaint insofar as asserted against him is granted, without opposition, and the complaint is dismissed insofar as asserted against Joseph Forgione, M.D., without prejudice to the


commencement of a new action by the plaintiff against him, in a proper jurisdiction and forum, based on the same facts as alleged against him in this action, subject to the limitations period applicable to claims litigated in said jurisdiction and forum; and it is further,

ORDERED that, on the court's own motion, the action is severed as against the defendant Joseph Forgione, M.D.; and it is further,

ORDERED that the Clerk of the court shall enter judgment in favor of the defendant Joseph Forgione, M.D., and against the plaintiff, dismissing the complaint insofar as asserted against the defendant Joseph Forgione, M.D., without prejudice, as set forth above.

This constitutes the Decision and Order of the court.

6/30/2025
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: