

Mihai v Buliga

2025 NY Slip Op 32631(U)

July 1, 2025

Supreme Court, New York County

Docket Number: Index No. 805365/2024

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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OCTAVIAN MIHAI,

Plaintiff,

- v -

ROBERT GEORGE BULIGA, DIANA BULIGA, S.C., and
MUSIC THERAPY, S.R.L.,

Defendants.

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INDEX NO. 805365/2024

MOTION DATE 04/29/2025
04/29/2025

MOTION SEQ. NO. 001, 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 26, 35, 36, 37, 38, 39, 40, 41, 44

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 24, 27, 28, 29, 30, 31, 32, 33, 34, 42, 43

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, fraudulent inducement, unjust enrichment, and, in effect, breach of contract, the plaintiff moves (1) pursuant to CPLR 3024(b) to strike, as scandalous and prejudicial, those documents uploaded by the defendant Robert George Buliga (Buliga) to the New York State Court Electronic Filing (NYSCEF) system as Docket Entry Nos. 2, 7, 9, 10, 12, 13, and 15, (b) pursuant to 22 NYCRR 216.1 to seal those documents, and (c) pursuant to CPLR 3215 for leave to enter a default judgment against the defendants Diana Buliga, S.C., and Music Therapy, S.R.L. (MOT SEQ 001). The defendants oppose that motion. That motion is denied. On the court’s own motion (MOT SEQ 002), it directed the parties to show cause why the complaint should not be dismissed on the grounds that the court lacked personal longarm jurisdiction over the defendants, all of whom are residents of Romania (CPLR 3211[a][8]) and/or because this court is an inconvenient forum for the adjudication of this action (CPLR 327). The

plaintiff opposes that motion, while the defendants contended that this court both lacked personal longarm jurisdiction over them and that this court is an inconvenient forum. That motion is granted, and the complaint is dismissed.

The plaintiff alleged his complaint that, from approximately 2019 to 2023, Buliga misrepresented himself as a qualified psychotherapist, and that he advertised his business through an internet website entitled "musictherapy.ro," indicating that it was established in Romania, and advertising that it primarily offered services of psychotherapy and "spiritual guidance." He further alleged that, at all relevant times, that defendant was merely a student in psychology and psychotherapy, and only in Bucharest, Romania, but not in any accredited institution in New York or elsewhere in the United States. In this respect, the plaintiff averred that, in or about March 2019, Buliga falsely represented to him that he was qualified in "the profession of psychologist with the right to free practice" thereof, that he reasonably relied on that false claim, and that he agreed to retain Buliga as his psychologist. According to the plaintiff, once he became Buliga's patient, the latter subjected him to "egregious psychological manipulation," spending "hours in conversation . . . in order to tease-out his weaknesses and exploit them." As an example, the plaintiff alleged that he was instructed to undertake "spiritual updates" and receive "communication training," which the plaintiff characterized as simply the generation of an invoice and a demand for payment, despite Buliga's failure to render any legitimate or recognized therapy whatsoever.

The plaintiff particularly alleged that,

"[t]hese services were part of a broader scheme involving psychological manipulation and what the Plaintiff now identifies as cult-like practices, aimed at isolating individuals from their support networks and extorting money under the guise of spiritual necessity. Buliga would effectively brainwash Mr. Mihai (and it is believed, others) into understanding that they need to obey him 100% to save their souls. He would harangue them into believing that they needed to isolate completely from family and friends or their souls were in danger.

"At other times, Defendant Buliga would call [the plaintiff] and tell him that he had

'wronged' Buliga in an 'unseen world' and had to pay \$12,400 in order to make amends—and moreover, that unless he paid, he would stop 'treating' [the plaintiff] and abandon his soul to purgatory.

"When [the plaintiff] resisted making payments, Defendant Buliga threatened his already-shaky psyche with dire emotional and spiritual consequences unless the 'training' and 'updates' continued.

"As further proof, when [the plaintiff] informed Defendant Buliga that he was ending the patient-'psychotherapist' relationship, Buliga demanded an additional \$20,000 and told [the plaintiff] he would suffer dire spiritual and emotional consequences if he did not pay.

"The Plaintiff has suffered significant psychological harm and financial loss, totaling approximately \$194,142.08 (ONE HUNDRED NINETY FOUR THOUSAND ONE HUNDRED FOURTY-TWO DOLLARS AND EIGHT CENTS), due to these deceptive practices."

The plaintiff did not assert any specific facts identifying individual wrongdoing by Buliga's codefendants, Diana Buliga, S.C. (Diana), and Music Therapy, S.R.L. (Music Therapy), other than to allege that they aided and abetted Buliga's fraudulent and tortious conduct, and that they, too, were unjustly enriched by Buliga's own wrongful conduct.

On February 27, 2025, the defendants attempted to move to dismiss the complaint pursuant to CPLR 3211(a)(8), contending that they were not subject to personal longarm jurisdiction in New York. The motion papers, however, were rejected for being submitted in an improper form, inasmuch as there was no proper notice of motion accompanying the papers that would have informed the plaintiff or the court when or where the motion was to be heard.¹

The motion papers, however, included a translated, 26-page written statement from Buliga, designated as an answer to the complaint, and separately uploaded as an answer. Buliga averred that the answer was submitted not only on his own behalf, but on behalf of Diana

¹ Although lack of personal jurisdiction is waived if not raised in a pre-answer motion to dismiss the complaint or asserted as an affirmative defense in an answer, Buliga raised it in his answer even though his initial motion was rejected for filing. In any event, since neither Diana nor Music Therapy properly answered the complaint, most likely because they were never properly served with the summons and complaint (see below), they are not barred by CPLR 3211(e) from relying upon the defense (see *Citimortgage, Inc. v Jameson*, 140 AD3d 1493 [3rd Dept 2016]; *Government Empls. Ins. Co. v Basedow*, 28 AD3d 766, 767 [2d Dept 2006]), and that defense was clearly intended to be raised on their behalf. Hence, this court properly initiated Motion Sequence 002 via its own order to show cause.

and Music Therapy as well. In that answer, he asserted that the initial agreement between the parties that triggered their collaboration in 2019 took place “on the territory of Romania and the requested services were provided from Romania, to the Romanian citizen Mihai Octavian-Constantin, at the latter's request,” that the relevant 2022 and 2023 contracts were drafted, negotiated, and executed in Romania, and that these contracts both required that any dispute arising thereunder fell within “the territorial jurisdiction of the courts of Bucharest.” He further averred therein that “the exercise of rights and fulfillment of obligations assumed by the parties was carried out on the territory of Romania,” and that the “services which were the subject-matter of the contract between the parties were provided from Romania in both physical and online format, and the achievement of the stages through which the objectives pursued by the contracting parties were carried out in Romania.” In further support of the motion, Buliga submitted documentation, as well as correspondence between the plaintiff and himself, in which, among other things, he explained his own view of the relationship between the plaintiff and the defendants, and the nature, timing, and extent of the services that he allegedly performed for the plaintiff. Inasmuch as Diana is not an attorney, and the corporate defendant, Music Therapy, was not represented by any attorney, the plaintiff deemed that answer only to have been served on behalf of Buliga himself, and consequently deemed Diana and Music Therapy to be in default. He thus moved under Motion Sequence 001, by order to show cause, for leave to enter a default judgment against them, and also requested that the details of his relationship with all of the defendants, as set forth in Buliga's answer, be stricken and sealed. The court denies all of the relief that the plaintiff seeks in connection with that motion.

By placing the condition of this mental health in controversy, the plaintiff has waived both the common-law physician-patient privilege and the physician-patient privilege recognized by the Health Insurance Portability and Accountability Act of 1996 (42 USC § 1320d, *et seq.*). Thus, issues relevant to the plaintiff's mental health, and treatment thereof, not only became discoverable, but would likely have been admitted into evidence in open court had there been a

trial of this action (see *Winslow v New York-Presbyterian/Weill-Cornell Med. Ctr.*, 203 AD3d 533, 533 [1st Dept 2022]; *Jones v FECS-WeCARE/Human Resources, NYC*, 139 AD3d 627, 628 [1st Dept 2016]; *Giustiniani v Giustiniani*, 278 AD2d 609, 611 [3d Dept 2000]; *Monica W. v Milevoi*, 252 AD2d 260, 262 [1st Dept 1999] [medical records]; *Kaplowitz v Borden, Inc.*, 189 AD2d 90, 92-93 [1st Dept 1993] [medical records]; *Napoleoni v Union Hosp.*, 207 AD2d 660, 662 [1st Dept 1994]).

22 NYCRR 216.1(a) provides, in relevant part, that,

“[e]xcept where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records . . . except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties.”

“[T]here is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). Although the public’s right to access is not absolute (see *Danco Labs. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept. 2000]), “[t]he presumption of the benefit of public access to court proceedings takes precedence, and sealing of court papers is permitted only to serve compelling objectives, such as when the need for secrecy outweighs the public’s right to access” (*Applehead Pictures, LLC v Perelman*, 80 AD3d 181, 191 [1st Dept 2010]; see *Matter of East 51st St. Crane Collapse Litig.*, 106 AD3d 473, 474 [1st Dept 2013]; *Danco Labs. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d at 6; see also *Schulte Roth & Zabel, LLP v Kassover*, 80 AD3d 500, 501-502 [1st Dept 2011]). As the Appellate Division, First Department, has explained, it has “been reluctant to allow the sealing of court records” (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.U.*, 28 AD3d 322, 324 [1st Dept 2006]; see *Matter of Holmes v Winter*, 110 AD3d 134, 138 [1st Dept 2013], *revd other grounds* 22 NY3d 300 [2013]; *Mosallem v Berenson*, 76 AD3d at 350; see generally *Davis v Nyack Hosp.*, 130 AD3d 455, 456 [1st Dept 2015]; *Matter of Brownstone*, 191 AD2d 167, 168 [1st Dept 1993]).

“Thus, the court is required to make its own inquiry to determine whether sealing is warranted, and the court will not approve wholesale sealing of [court] papers, even when both sides to the litigation request sealing” (*Applehead Pictures, LLC v Perelman*, 80 AD3d at 192 [citations omitted]; see *Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.U.*, 28 AD3d at 324; *Liapakis v Sullivan*, 290 AD2d 393, 394 [1st Dept 2002]; *Matter of Hofmann*, 284 AD2d 92, 93 [1st Dept 2001] [denying request to seal court records despite the parties’ confidentiality agreement]).

The party seeking to seal court records has the burden of establishing “good cause” for the sealing order (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007]). “Since confidentiality is the exception,” the movant must establish that “public access to the documents at issue will likely result in harm to a compelling interest of the movant and that no alternative to sealing can adequately protect the threatened interest” (*id.* [citations omitted]). This court has discretion, on a case-by-case basis, to determine if good cause exists (see *id.*). Hence, where a party fails to show the existence of a compelling reason to seal a record, sealing should be denied (see *Davis v Nyack Hosp.*, 130 AD3d at 456).

Neither a party’s embarrassment nor a general desire for privacy is sufficient, of itself, to establish good cause for sealing a court file (see *Matter of Holmes v Winter*, 110 AD3d at 138; *Mosallem v Berenson*, 76 AD3d at 351; *Liapakis v Sullivan*, 290 AD2d at 394; *Matter of Benkert*, 288 AD2d 247, 247 [1st Dept 2001]; *Matter of Hofmann*, 284 AD2d at 93; *State of New York ex rel. Aniruddha Banerjee v Moody’s Corp.*, 54 Misc 3d 705, 708 [Sup Ct, N.Y. County 2016]). Rather, the remedy for preventing the potential for significant embarrassment is to permit a party to proceed anonymously (see *Doe v Yeshiva Univ.*, 195 AD3d 565, 566 [1st Dept 2021]). Conclusory claims of the need for confidentiality, and even the existence of a confidentiality agreement between the parties, are insufficient bases upon which to seal court records (see *Matter of Benkert*, 288 AD2d at 247; *Matter of Hofmann*, 284 AD2d at 93; *Matter of Tram Thuy Nguyen*, NYLJ, Feb. 23, 2016, at 22, col 6, 2016 NYLJ LEXIS 2391 [Sur Ct, N.Y. County, Feb.

18, 2016]; *Matter of Golden*, NYLJ, Jul. 16, 2015, at 24, col 1 [Sur Ct, N.Y. County]; *Matter of Brown*, NYLJ, Apr. 10, 2013, at 23, col 6 [Sur Ct, Kings County]; *Matter of Soltesz*, NYLJ, Jun. 29, 2015, at 25 [Sur Ct, Bronx County]).

The rule disfavoring the sealing of records in a civil action frequently has been applied to deny requests for the sealing of medical records, despite a party's contention that the records contained sensitive or embarrassing medical information (see *Kelly D. v Niagara Frontier Tr. Auth.*, 177 AD3d 1261, 1264 [4th Dept 2019]; *Ava v NYP Holdings, Inc.*, 64 AD3d 407, 416-417 [1st Dept 2009]; *Borek v Seidman*, 2023 NY Slip Op 30617[U], *3-4, 2023 NY Misc LEXIS 854, *5 [Sup Ct, N.Y. County, Mar. 1, 2023] [Kelley, J.]; *Guberman v West*, 2019 NY Slip Op 33508[U], *4-5, 2019 NY Misc LEXIS 6352, *5-6 [Sup Ct, N.Y. County, Nov. 21, 2019]). There is no basis for the plaintiff's contention that public access to the information describing the services that he himself has claimed were fraudulently rendered, and the conditions for which he purportedly sought that treatment, would cause him to be adversely affected, other than due to personal embarrassment. The New York State court system processes thousands of medical and dental malpractice actions every year, and the court is aware of no study or proof that the commencement and prosecution of a medical, psychiatric, or other health-care malpractice action causes or contributes to adverse consequences other than personal embarrassment.

Consequently, the court declines to strike or seal any of the allegations made by Buliga in the documents he filed to NYSCEF as Docket Entry Nos. 2, 7, 9, 10, 12, 13, and 15, or any of the contents of those documents, as they are relevant to the claims that the plaintiff has asserted against the defendants, as well as to the issue of whether this court may exercise longarm personal jurisdiction over them. That branch of the plaintiff's motion is thus denied.

Where a plaintiff moves for leave to enter a default judgment, he or she must submit proof of service of the summons and complaint upon the defaulting defendants, proof of the defendants' defaults, and proof of the facts constituting the claim or claims (see CPLR 3215[f]; *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 [2003]; *Gray v Doyle*, 170 AD3d 969,

971 [2d Dept 2019]; *Rivera v Correction Officer L. Banks*, 135 AD3d 621 [1st Dept 2016]; *Atlantic Cas. Ins. Co. v RJNJ Services, Inc.* 89 AD3d 649 [2d Dept 2011]; see also *Manhattan Telecom. Corp. v H & A Locksmith, Inc.*, 21 NY3d 200, 202 [2013]). The plaintiff has not submitted proof that, prior to submitting his proposed order to show cause, he had served a copy of the summons and complaint upon them, let alone that he properly served these Romanian citizens in accordance with the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters (Hague Service Convention) (20 UST 361, 658 UNTS 163, TIAS 10072), which Romania ratified on August 21, 2003, and became effective as to that nation on April 1, 2004. By failing to establish that they were properly served with process,² the plaintiff cannot establish that those defendants ever were in default, even if the service of Buliga's answer by Buliga himself, rather than by an attorney, was a nullity as to them (see CPLR 321[a]; *Naroor v Gondal*, 5 NY3d 757 [2005] [corporation must appear by attorney-at-law]; *People ex rel. Field v Cronshaw*, 138 AD2d 765, 765 [2d Dept 1988] [nonattorney husband may not represent wife in court proceeding]).

With respect to the proof of the facts constituting the claim,

“CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action (see, 4 Weinstein-Korn-Miller, NY Civ Prac paras. 3215.22-3215.27). The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts”

(*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]; see *Martinez v Reiner*, 104 AD3d 477, 478 [1st Dept 2013]; *Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006]). Stated another way, while the “quantum of proof necessary to support an application for a default judgment is not exacting . . . some firsthand confirmation of the facts forming the basis of the claim must be proffered” (*Guzetti v City of New York*, 32 AD3d 234, 236 [1st Dept 2006]). In other words, the

² The plaintiff submitted proof only that he served Diana and Music Therapy, in accordance with the Hague Service Convention, with a copy of this court's signed order to show cause initiating Motion Sequence 001 and the papers that he filed in support of that motion.

proof submitted must establish a prima facie case (*see id.*; *Silberstein v Presbyterian Hosp.*, 95 AD2d 773 [2d Dept 1983]). “Where a valid cause of action is not stated, the party moving for judgment is not entitled to the requested relief, even on default” (*Green v Dolphy Constr. Co.*, 187 AD2d 635, 636 [2d Dept 1992]; *see Walley v Leatherstocking Healthcare, LLC*, 79 AD3d 1236, 1238 [3d Dept 2010]). In moving for leave to enter a default judgment, the plaintiff must “state a viable cause of action” (*Fappiano v City of New York*, 5 AD3d 627, 628 [2d Dept 2004]). In evaluating whether the plaintiff has fulfilled this obligation, the defendant, as the defaulting party, is “deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The court, however, must still reach the legal conclusion that those factual allegations establish a prima facie case (*see Matter of Dyno v Rose*, 260 AD2d 694, 698 [3d Dept 1999]).

Proof that the plaintiff has submitted “enough facts to enable [the] court to determine that a viable” cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d at 71; *see Gray v Doyle*, 170 AD3d at 971) may be established by an affidavit of a party or someone with knowledge, authenticated documentary proof, or by a complaint verified by the plaintiff that sufficiently details the facts and the basis for the defendant’s liability (*see CPLR 105[u]*; *Woodson v Mendon Leasing Corp.*, 100 NY2d at 71; *Gray v Doyle*, 170 AD3d at 971; *Voelker v Bodum USA, Inc.*, 149 AD3d 587, 587 [1st Dept 2017]; *Al Fayed v Barak*, 39 AD3d 371, 371 [1st Dept 2007]; *see also Michael v Atlas Restoration Corp.*, 159 AD3d 980, 982 [2d Dept 2018]; *Zino v Joab Taxi, Inc.*, 20 AD3d 521, 522 [2d Dept 2005]; *see generally Mitrani Plasterers Co., Inc. v SCG Contr. Corp.*, 97 AD3d 552, 553 [2d Dept 2012]). For purposes of CPLR 3215, a complaint verified by a party may be employed as proof of the facts constituting the claim (*see CPLR 105[u]*), but only where it sets forth sufficient, detailed evidentiary facts, rather than mere conclusions (*see Celnick v Freitag*, 242 AD2d 436, 437 [1st Dept 1997]). A verified complaint that is conclusory in nature and devoid of factual allegations constituting the claim is insufficient

to demonstrate the requisite proof (see *Cohen v Schupler*, 51 AD3d 706, 707 [2d Dept 2008]; *Luna v Luna*, 263 AD2d 470 [2d Dept 1999]). In other words, the verified complaint must “set forth the facts constituting the alleged negligence” (*Beaton v Transit Facility Corp.*, 14 AD3d 637, 637 [2d Dept 2005]) or wrongdoing.

The complaint in this action, which was indeed verified by the plaintiff himself, set forth in detail the wrongful acts allegedly committed by Buliga. With respect to the unjust enrichment and aiding and abetting causes of action that the plaintiff asserted against the other defendants, however, the complaint does not articulate any additional facts to support those claims. Similarly, in his affidavit of merit that he submitted in support of his motion, the plaintiff does not even mention Diana or Music Therapy, let alone any particular conduct that constituted aiding and abetting Buliga’s alleged fraud or a relationship amongst or between the parties that would support a claim of unjust enrichment against them. Moreover, although CPLR 4504(d), which provides that practicing medicine without a license or authorization in New York is “deemed prima facie evidence of negligence,” it is unclear whether that statute applies to persons practicing medicine without a license in another state or country, and, in any event, Buliga has submitted a copy of a license dated July 21, 2021 that had been issued to him by the Romanian Board of Psychologists and, thus, prior to the services contracts he entered into with the plaintiff in 2022 and 2023.

The plaintiff did not allege that Diana practiced psychology without a license, and Music Therapy established that Buliga, as its principal, did obtain a license. In the context of a medical malpractice action not otherwise within the ambit of CPLR 4504(d), an affidavit or affirmation of merit from an expert is required unless the matters alleged are within the ordinary experience and knowledge of a lay person (see *Fiore v Galang*, 64 NY2d 999, 1000-1001 [1985]; *Bollinger v Mark Mordechai Liechtung, DMD, P.C.*, 2023 NY Slip Op 31537[U], *5, 2023 NY Misc LEXIS 2231, *6 [Sup Ct, N.Y. County, May 5, 2023] [Kelley, J.]; *Checo v Mwando*, 2022 NY Slip Op 31223[U], *4, 2022 NY Misc LEXIS 1865, *5 [Sup Ct, N.Y. County, Apr. 7, 2022] [Kelley, J.];

Garcia v Solomon, 2020 NY Misc LEXIS 17635, *2 [Sup Ct, Bronx County, Jun. 19, 2020]; *Charles v Wolfson*, 62 Misc 3d 1224[A], 2019 NY Slip Op 50251[U], *1, 2019 NY Misc LEXIS 866, *3 [Sup Ct, Bronx County, Mar 6, 2019]). Here, the authenticity, genuineness, and propriety of the services rendered to the plaintiff are not within the ordinary experience and knowledge of a lay person, but can only be assessed by a psychologist or mental-health professional trained in similar disciplines. Since the plaintiff did not submit an expert affirmation or affidavit to establish that the services rendered deviated from an established standard of care or constituted psychologically fraudulent conduct, he has failed to establish his entitlement to a default judgment against Music Therapy, even if he had demonstrated that it was properly served with process and was, in fact, in default.

Consequently, that branch of the plaintiff's motion seeking leave to enter a default judgment against Diana and Music Therapy must be denied.

In response to the order to show cause issued by this court on its own motion, the defendants established that they all reside in Romania, that the relevant agreements were entered into in Romania, that they invoiced the plaintiff from Romania, and that all of the services that they provided to the plaintiff were undertaken in Romania, either in person or remotely. The defendants further showed that they do not own property in New York, that they do not reside in New York, and that they do not "do business" in New York. They thus demonstrated that New York courts do not have general, all-purpose jurisdiction over them, since they do 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]). They further established that the New York courts also do not have "specific" personal jurisdiction over them, since they 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 causes of action against them 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]). The mere fact that the defendants maintained a passive Romanian website that was accessible to New York residents in New York is an insufficient ground upon which to conclude that they did business in New York, or transacted business with the plaintiff in New York (see *Paterno v Laser Spine Inst.*, 24 NY3d at 377). In *Paterno*, the Court of Appeals explained that, in addition to accessing an out-of-state defendant health-care provider on the internet, a patient engaged in several telephone calls and email communications with that provider, sent magnetic resonance imaging scans and blood work to the provider, and received prescriptions at his New York-based pharmacies from that provider. The Court nonetheless held that such contacts were insufficient to establish personal longarm jurisdiction over the provider (see *id.*). As it explained, “it is apparent that” those contacts “were responsive in nature, and not the type of interactions that demonstrate the purposeful availment” of the privilege of conducting activities in New York that is “necessary to confer personal jurisdiction over . . . out-of-state defendants” (*id.* at 378).

“A non-domiciliary defendant transacts business in New York when on his or her own initiative[,] the non-domiciliary projects himself or herself into this state to engage in a sustained and substantial transaction of business. The primary consideration is the quality of the non-domiciliary’s New York contacts. As relevant here, purposeful availment occurs when the non-domiciliary seeks out and initiates contact with New York, solicits business in New York, and establishes a continuing relationship”

D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro, 29 NY3d at 298 [citations and internal quotation marks omitted]; *Etra v Matta*, 61 NY2d 455, 457-459 [1984] [Massachusetts doctor, who was solicited in Massachusetts by a New York patient, and treated the patient in Massachusetts, but subsequently sent an experimental drug to New York and acted as a consultant to a New York doctor, did not subject himself to jurisdiction in New York];

Bloomgarden v Lanza, 143 AD3d 850, 852 [2d Dept 2016] [where defendants communicated from California with plaintiffs in New York via mail, telephone, and email because plaintiffs were New York domiciliaries, but defendants were not actively participating in transactions in New York, and the communications with the plaintiffs in New York all concerned the services that the defendants were performing in Florida, plaintiffs failed to show that the defendants actively projected themselves into New York so as to engage in a sustained and substantial transaction of business within New York]; *Minella v Restifo*, 124 AD3d 486, 486 [1st Dept 2015] [“the listing of a New York office and telephone number on a website, without more, is insufficient to confer personal jurisdiction”]).

Inasmuch as the court concludes that the defendants not only did not have a presence in New York, but did not actively project themselves into New York to engage in a sustained and substantial transaction of business within New York, and the plaintiff has failed even to make a prima facie showing that they did so (*see Whitcraft v Runyon*, 123 AD3d 811, 812 [2d Dept 2014]), the complaint must be dismissed for lack of personal longarm jurisdiction over the defendants.

Alternatively, the court concludes that, even if it could exercise personal longarm jurisdiction over the defendants, New York is an inconvenient forum in which to adjudicate the claims asserted by the plaintiff. The common-law doctrine of forum non conveniens permits a court having jurisdiction over the parties to an action to refrain from adjudicating that action where there is only the most tenuous relationship between the parties, their transactions, or the subject of the dispute and the forum state. In New York, the application of the doctrine of forum non conveniens is primarily governed by CPLR 327, which codifies the doctrine. Additional statutory directives both limit and define the scope of the doctrine, and an extensive judicial gloss has further refined the manner in which courts can be expected to apply it.

CPLR 327(a) provides, in relevant part, that when a court “finds that in the interest of substantial justice the action should be heard in another forum,” the court, “on the motion of any party,” may stay or dismiss the action, in whole or in part, “on any conditions that may be just.” The statute further provides that “[t]he domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action.” Inasmuch as a court may not sua sponte dismiss a complaint on the ground of forum non conveniens (see *VSL Corp. v Dunes Hotels & Casino*, 70 NY2d 948, 949 [1988]), this court initiated a motion by order to show cause so that the parties would be given the opportunity to brief the issue. In the absence of a motion on notice by a party, a court may entertain granting such relief where it expressly notifies the parties that it is considering it, and the parties are given the opportunity to fully argue their positions with respect to the issue (see *Mashreqbank PSC v Ahmed Hamad Al Gosaibi & Bros. Co.*, 23 NY3d 129, 136 [2014] [“While the idea of dismissing the main complaint on forum non conveniens grounds was first mentioned by the Supreme Court Justice, he gave the parties a full opportunity to address the issue—indeed, he asked them to do so.”]). In any event, Buliga, in effect, raised the issue both in his rejected motion papers and in his answer.

The factors that a court must consider in determining whether it is an inconvenient forum include:

the burden on New York courts in adjudicating the dispute, which may be demonstrated by establishing that any assets that may be affected by the disposition of the controversy would not be subject to the mandate of a New York court, or that the court would be engaging itself in a foreign political controversy;

the potential hardship to the defendant if the controversy were adjudicated by a New York court;

the unavailability of an alternative forum in which the plaintiff may commence the action, including unavailability by virtue of shorter limitations periods in such forums than those available in New York and differences between substantive New York law and those of other potential forum states;

whether all of the parties to the action are nonresidents of New York;

whether the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction;

whether the real or personal property that is the subject of the cause of action is situated in a foreign jurisdiction;

whether any conduct relevant to the controversy occurred in New York, and whether that conduct was of major or minor importance;

the presence or absence of witnesses domiciled in New York or documents maintained in New York;

whether related litigation is pending in New York;

whether more than the mere convenience of the plaintiff warrants the prosecution of the action in New York

(see *Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 [1984]; see also *Mashreqbank PSC v Ahmed Hamad Al Gosaibi & Bros. Co.*, 23 NY3d at 138-139). The doctrine of forum non conveniens is to be applied with flexibility, based upon the circumstances of each case (see *Martin v Mieth*, 35 NY2d 414, 417-418 [1974]). No one factor is controlling (see *Islamic Republic of Iran v Pahlavi*, 62 NY2d at 479; *Irrigation & Ind. Dev. Corp. v. Indag S.A.*, 37 NY2d 522, 525-526 [1975] [the court's overall focus must relate to the question of whether New York is an inconvenient forum and whether another is available which will best serve the ends of justice and the convenience of the parties]).

Here, there is no substantial nexus between New York, the defendants, and the subject of the dispute, while the plaintiff is not legally barred from seeking relief in another judicial forum, a crucial factor in analyzing whether to invoke the doctrine. Although he is a New York resident, he is a Romanian national, and has access to the courts of Romania to resolve the underlying dispute. Moreover, the mere passage of funds through the plaintiff's New York bank account does not, without more, preclude the dismissal of that action on the ground of forum non conveniens (see *Mashreqbank PSC v Ahmed Hamad Al Gosaibi & Bros. Co.*, 23 NY3d at 137). All of the other factors present in this action militate in favor of dismissal on the grounds of forum non conveniens. Assets that may be affected by the disposition of this controversy would not be subject to the mandate of a New York court, since they are situated in Romania, the

defendants have established that they would be subject to hardship were the action to remain in New York in light of recent travel restrictions and issues facing non-nationals at United States airports, the transaction out of which the causes of action arose occurred exclusively in a foreign jurisdiction, no conduct relevant to the controversy occurred in New York, and any ancillary conduct of the plaintiff that occurred in New York was of minor importance. There are no witnesses domiciled in New York other than the plaintiff himself, and there are no documents maintained in New York other than those in the plaintiff's possession. In addition, witnesses, including expert witnesses, who could testify to Buliga's licensure, the standards of care applicable to psychologists in Romania, the propriety of the services rendered by Buliga to the plaintiff, and the reasonable value of those services all reside in Romania. In short, the plaintiff commenced this action in New York solely for his own convenience.

A court that dismisses a complaint in an action on the ground of forum non conveniens may condition the dismissal upon a defendant's timely written consent to the plaintiff's recommencement of the action in another forum by a date certain (*see National Bank & Trust Co. of N. Am., Ltd. v Banco de Vizcaya, S.A.*, Index No. 00792/1982 [Sup Ct, N.Y. County], *affd* 134 AD2d 971 [1st Dept 1987], *affd* 72 NY2d 1005 [1988]), a defendant's consent to deem the commencement date of the New York action to be the commencement date of any newly commenced action in another forum, and/or the waiver of the statute of limitations defense in that new action (*see Patriot Exploration, LLC v Thompson & Knight, LLP*, 16 NY3d 762, 763 [2011]). This court nonetheless declines to impose those conditions here because it also is dismissing the complaint for lack of personal longarm jurisdiction over the defendants.

In light of the foregoing, it is,

ORDERED that the plaintiff's motion (MOT SEQ 001) is denied; and it is further,


ORDERED that, upon consideration of the parties' submissions in favor and in opposition to the proposed relief set forth in the order pursuant to which the court directed the parties to show cause why the complaint should not be dismissed (MOT SEQ 002), the motion

is granted, and the complaint is dismissed both for the court’s lack of personal longarm jurisdiction over the defendants and on the ground of forum non conveniens; and it is further,

ORDERED that the Clerk of the court shall enter judgment dismissing the complaint as against all of the defendants.

This constitutes the Decision and Order of the court.

7/1/2025
DATE



JOHN J. KELLEY, J.S.C.

MOTION 001:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
MOTION 002:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE