

<b>D &amp; V Realty LLC v Klyukin</b>
2026 NY Slip Op 31782(U)
April 20, 2026
Supreme Court, New York County
Docket Number: Index No. 656782/2022
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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D & V REALTY LLC, DERIVATIVELY ON BEHALF OF THE MEMBERS OF 192 8TH AVENUE REALTY GROUP LLC, EAST 3 MEMBERS HOLDING LLC, DERIVATIVELY ON BEHALF OF THE MEMBERS OF 238-240 E3 STREET REALTY LLC, GDD REALTY LLC, DERIVATIVELY ON BEHALF OF THE MEMBERS OF 128 WEST 26TH STREET DEVELOPMENT LLC, CIP1 LLC, D & V REALTY LLC,

Plaintiffs,

- v -

MIKHAIL VASILYEVICH KLYUKIN, RI 128 26TH STREET, LLC, RI 192 8TH AVENUE, LLC, RI 238-240 EAST 3RD STREET, LLC, ORANGE REAL ESTATE DEVELOPMENT LLC, AND AHIMSA NY, LLC, INSPIRON MANAGEMENT, INC., GARY VINBAYTEL, 128 WEST 26TH STREET DEVELOPMENT LLC, 192 8TH AVENUE REALTY GROUP LLC, 238-240 E3 STREET REALTY LLC,

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 031) 785, 786, 787, 788, 789, 790, 791, 797, 803, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 829, 836 were read on this motion to DISMISS.

Based on the foregoing documents, and for the reasons explained below in addition to those stated on the record following oral argument on February 4, 2026 (*see* NYSCEF 863 at 70-73), Defendant Mikhail Vasilyevich Klyukin’s motion to dismiss for lack of personal jurisdiction is granted.

In this action, Plaintiffs D & V Realty LLC, East 3 Members Holding LLC, GDD Realty LLC, CIP1 LLC, members of 192 8<sup>th</sup> Avenue Realty Group LLC, 238-249 E3 Realty LLC, and 128 West 26<sup>th</sup> Street Development LLC (collectively, “Plaintiffs”) allege that Defendants Mr. Klyukin, RI 128 26<sup>th</sup> Street, LLC, RI 192 8<sup>th</sup> Avenue, LLC, RI 238-240 East 3<sup>rd</sup> Street, LLC,

Orange Real Estate Development LLC, Ahimsa NY, LLC, and Inspiron Management, Inc. (collectively, “Defendants”) violated their contractual obligations and fiduciary duties by, among other actions, effecting a change of management in 192 8<sup>th</sup> Avenue Realty Group LLC, 238-249 E3 Realty LLC, and 128 West 26<sup>th</sup> Street Development LLC in favor of entities shortly thereafter sanctioned by the United States Office of Foreign Asset Control.

Following substantial discovery, Mr. Klyukin now moves for an order under CPLR 3211(a)(8) dismissing the claims asserted against him in the Second Amended Complaint for lack of personal jurisdiction.

### **FACTUAL BACKGROUND<sup>1</sup>**

This case concerns the alleged mismanagement of three special purpose entities formed to develop three condominium projects located in Manhattan: 128 West 26 Street Development LLC (“W26 Street”), 238-240 E3 Street Realty LLC (“E3 Street”), and 192 8th Avenue Realty Group LLC (“8th Avenue”) (collectively, the “Companies” or “Development Companies”).

According to the Second Amended Complaint, Plaintiff GDD Realty LLC (“GDD”) owns a 60% membership interest in W26 Street, while Defendant RI 128 26th Street, LLC (“RI 128”) holds the remaining 40% interest (NYSCEF 652 [“Sec. Amend. Compl.”] ¶ 14). Plaintiff East 3 Members Holding LLC holds a 25.9% membership interest in E3 Street, while the remaining 74.1% interest is held by Defendant RI 238-240 East 3rd Street, LLC (“RI E3”) (*id.* ¶ 25). Plaintiff D & V Realty LLC (“D&V”) owns a 25% membership interest in 8th Avenue, while the remaining 75% is owned by Defendant RI 192 8th Avenue Realty Group (“RI 8”) (*id.* ¶¶ 32-34). RI 26, RI E3, and RI 8 (the “RI Entities”) are all owned by Defendant Orange Real

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<sup>1</sup> Unless otherwise stated, the allegations contained in the Second Amended Complaint are taken to be true solely for the purposes of this background statement of facts.

Estate Development LLC (“ORED”)—managed by Defendant Alexander Terekhov and, in turn, owned by Zayelco, Ltd., a Cypriot company owned and managed by Mr. Klyukin (*see* NYSCEF 787 ¶¶ 2-6).

In letters dated February 15, 2022, Defendants replaced CIP1 LLC and D&V—Plaintiff entities managed by Gary Vinbaytel—as managers of the Development Companies, ostensibly on the basis of their alleged breaches of the Companies’ Operating Agreements (Sec. Amend. Compl., ¶ 87). Appointed in their place was Ahimsa NY, LLC (“Ahimsa”), another subsidiary of ORED managed by Mr. Terekhov (*id.*, ¶ 88).

Shortly thereafter—on February 24, 2022—the U.S. Government began sanctioning Russian entities (*id.*, ¶ 1) and, on March 24, 2022, Mr. Klyukin was named on the Specially Designated Nationals and Blocked Persons List by the U.S. Department of Treasury Office of Foreign Assets Control (“OFAC”) (*id.*, ¶ 95).

Under OFAC regulations, “any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons is itself considered to be a blocked person” (*id.*, ¶ 96). Pursuant to this rule, OFAC’s designation of Mr. Klyukin had the effect of rendering the RI Entities and Ahimsa as Specially Designated Nationals, prohibiting them from acting on behalf of the Companies without a license from OFAC (*id.* ¶¶ 98-99).

Plaintiffs allege that the takeover of the Companies, compounded by Mr. Klyukin’s OFAC designation, had a material adverse impact on the Companies’ operations, particularly their ability to attract investment and meet debt and tax obligations (*e.g.*, *id.* ¶¶ 101, 102, 105). According to Plaintiffs, this impact was exacerbated by the RI Entities’ failure to appoint replacement managers once the sanctions came into effect (*id.* ¶ 101). The one replacement who was appointed—Inspiron Management, Inc. (“Inspiron”) as manager of W26 Street—

purportedly exacerbated the situation since the principal of Inspiron, Alan Gershkovich, was also tied up in the OFAC sanctions (*id.* ¶ 104).

The Second Amended Complaint asserts two remaining causes of action: breach of fiduciary duty against all Defendants and breach of contract against the RI Entities (*id.* ¶¶ 120-137). Mr. Klyukin now moves to dismiss the Complaint as against him on the ground that, regardless of the merits of Plaintiffs' claims, this Court lacks personal jurisdiction over him for purposes of this litigation.

### DISCUSSION

CPLR 3211(a)(8) permits a party to move to dismiss on the ground that “the court has not jurisdiction of the person of the defendant.” “[T]he plaintiff has the burden of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate jurisdiction” (*Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485, 486 [1st Dept 2017]).

New York courts recognize two categories of personal jurisdiction: (a) general or all-purpose jurisdiction; and (b) specific or case-linked jurisdiction (*Aybar v Aybar*, 37 NY3d 274, 288 [2021]). It is undisputed that Mr. Klyukin, the moving party, is a non-domiciliary, so the inquiry focuses on specific jurisdiction.

To exercise specific jurisdiction over a non-domiciliary, two requirements must be satisfied: (i) the action must be permissible under the long-arm jurisdiction of CPLR 302, and (ii) the exercise of jurisdiction must comport with due process (*Williams v Beemiller, Inc.*, 33 NY3d 523, 528 [2019]). “If either the statutory or constitutional prerequisite is lacking, the action may not proceed” (*Id.*).

## I. Long-Arm Jurisdiction Under CPLR 302

Plaintiffs assert jurisdiction under CPLR 302(a)(1), (a)(3), and (a)(4) principally on the basis that Mr. Klyukin, acting through agents operating in New York, instigated the takeover of the Development Companies. However, Plaintiffs' allegations of Mr. Klyukin's involvement are vague, conclusory, and have not been substantiated by the lengthy discovery process nearing completion in this action. Accordingly, Mr. Klyukin's motion to dismiss on jurisdictional grounds is granted.

### A. CPLR 302(a)(1)

CPLR 302(a)(1) authorizes "a court [to] exercise personal jurisdiction over any non-domiciliary [...] who in person or through an agent [...] transacts any business within the state or contracts anywhere to supply goods or services in the state." "[P]roof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claims asserted" (*Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]).

While a plaintiff attempting to invoke long-arm jurisdiction based on the actions of an agent "need not establish a formal agency relationship," it must "convince the court that [the New York actors] engaged in purposeful activities in this State in relation to the [the] transaction for the benefit of and with the knowledge and consent of [the defendant] and that [the defendant] exercised some control over [the New York actors]" (*Kreutter*, 71 NY2d, at 467). "[T]o make a prima facie showing of 'control,' a plaintiff's allegations must sufficiently detail the defendant's conduct so as to persuade a court that the defendant was a 'primary actor' in the specific matter in question; control cannot be shown based merely upon a defendant's title or position within the

corporation, or upon conclusory allegations that the defendant controls the corporation” (*Coast to Coast*, 149 AD3d, at 487). “[V]ague, conclusory and unsubstantiated allegations do not suffice to establish long arm jurisdiction” (*id.* at 488).

Here, Plaintiffs have established—through contemporaneous communications between Mr. Klyukin and others, including Mr. Terekhov—that, between 2016 and 2019, Mr. Klyukin maintained some control over those individuals and, in turn, was involved in the management of the Development Companies. In particular, the communications appear to indicate that, until at least 2019, Mr. Klyukin enjoyed a veto over important managerial decisions being made in relation to the condominium projects that the Companies were overseeing (*see* NYSCEF 815 [WhatsApp messages exchanged between Mr. Terekhov and Mr. Vinbaytel between 2016 and 2019 reflecting that Mr. Terekhov was required to obtain Mr. Klyukin’s approval for major decisions]; NYSCEF 813 [emails between Mr. Vinbaytel and Mr. Terekhov concerning project management, copied to Mr. Klyukin]; *see also* NYSCEF 809 [“Vinbaytel Aff.”] ¶¶ 24-25 [attesting that Mr. Klyukin consistently contributed to financing, spending, and development decisions, both personally and through intermediaries, and that he “dominated the decision-making process”]). On this basis, Plaintiffs assert that “Klyukin’s actions (and later inaction) caused direct injury in New York” (NYSCEF 819 [“Memo Opp”] at 14; *see also* Vinbaytel Aff. ¶ 49 [asserting that Mr. Klyukin “personally engineered the removal of local management to seize control of the companies”]).

However, the latest showing of Mr. Klyukin’s engagement with the Properties is from 2020, approximately two years before the activity underpinning Plaintiffs’ claims occurred (*see* NYSCEF 817). Despite almost four years of discovery, Plaintiffs have produced no evidence that Mr. Klyukin—either directly or through intermediaries—caused or impacted the change in

managerial control or otherwise participated in the acts of mismanagement alleged to give rise to Plaintiffs' causes of action. While the nature of Mr. Klyukin's position between 2016 and 2019 might (and likely does) imply that Mr. Klyukin played some role in earlier decisions, the Court cannot exercise jurisdiction under CPLR 302(a)(1) merely based on Plaintiffs' conclusory allegations that this control continued through 2022, let alone their conclusory allegations that Mr. Klyukin initiated the specific changes in managerial control that form the basis of this action (*see Coast to Coast*, 149 AD3d, at 487 [declining to exercise jurisdiction notwithstanding allegations that the defendant maintained daily communication with a New York company and routinely directed its agent to transfer funds because the plaintiff failed to allege facts demonstrating that the defendant controlled or participated in the solicitation of the investments at issue]; *cf. Kreutter*, 71 NY2d, at 467 [recognizing jurisdiction where the record showed the non-domiciliary used a New York company to secure the very investment from which the claims arose, compensated the company for that purpose, and received the invested funds]; *Parke-Bernet Galleries, Inc v Franklyn*, 26 NY2d 13, 17-18 [1970] [affirming personal jurisdiction where the defendant actively participated in the New York auction at issue by "receiving and transmitting bids over an open telephone line" while being "directly assisted in this activity by [an agent], who was physically present"]).

Accordingly, Plaintiffs have failed to establish jurisdiction under CPLR 302(a)(1).

*B. CPLR 302(a)(3)*

CPLR 302(a)(3) authorizes "a court [to] exercise personal jurisdiction over any non-domiciliary [...] who in person or through an agent [...] commits a tortious action without the state causing injury to person or property within the state." Additionally, it must be shown that

the non-domiciliary either “regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state” or “expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce” (CPLR 302[a][3]).

Plaintiffs contend that the Court has personal jurisdiction under CPLR 302(a)(3) because the alleged wrongdoing at the heart of this action—namely, the allegedly improper seizure of the development companies and related mismanagement—arose from Mr. Klyukin’s actions abroad and resulted in injury within New York, including the devaluation of New York real estate, financial losses to investors, and related harm (Memo Opp at 21-23). Plaintiffs further contend that Mr. Klyukin knew, or should have expected, that he would be sanctioned before seizing control of the companies, that he has been involved in the acquisition and development of New York properties for at least a decade, and that he derives substantial revenue from those activities (*id.*).

Again, however, these allegations are vague, conclusory, and unsupported by evidence establishing Mr. Klyukin’s involvement in the specific tortious conduct alleged to give rise to Plaintiffs’ causes of actions (*see LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 [2000] [noting that the conferral of jurisdiction requires, *inter alia*, a showing that the cause of action arose from the defendant’s tortious act(s)]). For the same reasons discussed with respect to CPLR 302(a)(1), therefore, the Court lacks personal jurisdiction under CPLR 302(a)(3).

C. CPLR 302(a)(4)

CPLR 302(a)(4) authorizes “a court [to] exercise personal jurisdiction over any non-domiciliary [...] who in person or through an agent [...] owns, uses or possesses any real property situated within the state” from which the cause of action arises.

Plaintiffs have demonstrated, and Mr. Klyukin does not dispute, that Mr. Klyukin holds interests in corporate entities that themselves have interests in the New York properties on which Plaintiffs’ causes of action center. Plaintiffs have not, however, shown that Mr. Klyukin himself owns, uses, or possesses these properties, nor have they cited any authority for the proposition that corporate ownership interest, standing alone, constitutes a basis for personal jurisdiction under CPLR 302(a)(4). Accordingly, CPLR 302(a)(4) does not apply.

II. **Due Process**

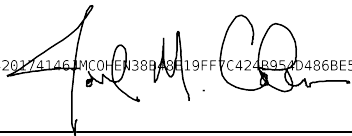
In view of the foregoing, there is no need to determine whether due process concerns independently would preclude exercise of personal jurisdiction over Mr. Klyukin.

Accordingly, it is

**ORDERED** that Defendant Mikhail Vasilyevich Klyukin’s motion to dismiss the claims asserted against him in the Second Amended Complaint for lack of personal jurisdiction is **GRANTED**.

This constitutes the Decision and Order of the Court.

4/20/2026  
DATE

  
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JOEL M. COHEN, J.S.C.

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APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
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