SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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HOUSSAM GHASSAN MALAEB,

Plaintiff,

- v -

BANKMED S.A.L., BANK AUDI S.A.L.

Defendants.

INDEX NO. 157804/2020

MOTION DATE 11/24/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127

were read on this motion to DISMISS.

In this action, plaintiff Houssam Ghassan Malaeb seeks to recover amounts he deposited with defendants BankMed S.A.L (BankMed) and Bank Audi S.A.L. (Bank Audi) (collectively, defendants or the banks) in Lebanon. Plaintiff alleges that Lebanon is currently in the midst of a financial crisis, and that the Lebanese banking system is a Ponzi scheme, pursuant to which the banks, the chief perpetrators of the Ponzi scheme, lured foreign investment from depositors with false representations and lucrative interest rates. Plaintiff seeks remedies against defendants for their allegedly "brazen theft of more than $1.8 million dollars ('USD') from Malaeb, their banking client in common" (complaint [NYSCEF Doc No. 1], ¶ 1).

For the reasons set forth below, defendants' motion to dismiss the complaint is granted on the separate and independent grounds of lack of personal jurisdiction over the defendants,

forum non conveniens, and (as to BankMed) a contractual provision mandating the "Courts of Beirut" as the exclusive forum for resolving "any conflict or dispute."

FACTUAL BACKGROUND

The Parties

Plaintiff is a Lebanese national who resides and works in Saudi Arabia for a Saudi marketing company (complaint, ¶¶ 9, 20). Plaintiff is not alleged to have any contacts with New York, or with anywhere else in the United States (*see id.*, ¶ 20).

Defendants are two of Lebanon's leading commercial banks, headquartered in Beirut, Lebanon (complaint, ¶¶ 7, 21-22; affirmation of Ahmed Hammoud, BankMed's regional manager [NYSCEF Doc No. 12], ¶ 4; affirmation of Assaad Meouchy, Bank Audi's head of Branch Network Management [NYSCEF Doc No. 13], ¶ 6). The banks are regulated by the Banque Du Liban (BDL), the regulator for all banks in Lebanon (Hammoud affirmation, ¶ 6; Meouchy affirmation, ¶ 7). Neither bank is alleged to have offices, employees, or operations anywhere in the United States, including in New York (*see* complaint, ¶¶ 21–22).

Lebanon's Banking System and Financial Crisis

Plaintiff alleges that the Lebanese banking system is a Ponzi scheme, and that BDL is the architect of the Ponzi scheme (*id.*, ¶¶ 2-3). In the 1990s, as Lebanon emerged from a fifteen-year civil war, a dual currency system formed with the USD and the Lebanese Lira (the "Lira") both being used widely (*id.*, ¶ 3). According to plaintiff, the two currencies were not pegged, which caused massive swings in the exchange rate, and chaos in the Lebanese economy (*id.*). In an attempt to solve the problem, the then and current BDL Governor, Riad Salameh, engineered the pegging of the exchange rate at 1507.51515 Lira to $1 USD. To support the artificial pegging of the exchange rate, BDL and the Lebanese government sought to encourage foreign currency

investment, particularly USD, which ultimately became the dominant deposit currency in Lebanon (*id.*, ¶ 4).

Plaintiff alleges that Lebanese banks lured investments of USD by fraudulently representing to depositors that they would earn exceedingly high interest rates, while still having ready access to their USD. The Lebanese banks did so, despite knowing the interest rates they represented they would pay depositors were unsustainable and would require the banks to continue to fraudulently induce new depositors to keep the scheme propped up. The commercial banks then funneled the fraudulently induced deposits to BDL, which in turn used the USD to fund government spending (*id.*, ¶ 5).

According to plaintiffs, by 2016, Lebanese banks began recognizing depleting USD deposits, which strained the Ponzi scheme as defendants' interest obligations increased. Thus, Lebanese banks began offering even higher interest rates to attract USD depositors both within Lebanon and abroad to feed the failing scheme. The payment of inflated interest rates was unsustainable, and when the flood of new USD deposits waned, the Lebanese banking system collapsed (*id.*, ¶ 6).

In 2019, Lebanon began to experience a political and economic crisis. In October 2019, Lebanese government action to address economic issues triggered widespread protests (*see* 10/18/19 WSJ article [NYSCEF Doc No. 14]). These protests resulted in the Prime Minister's resignation (10/31/2019 Financial Times article [NYSCEF Doc No. 15]). Concerns heightened when a new government was not readily convened (*see id.*). In response to this political uncertainty and mounting nationwide economic pressure and liquidity concerns, Lebanon's financial institutions took emergency measures, which included temporary bank closures on October 17, 2019 (*see* 11/1/19 Al Jazeera article [NYSCEF Doc No. 17]). When the banks re-

opened two weeks later, on November 1, they did so with well-publicized limitations on withdrawals (*see id.*). Lebanon's banks closed again one week later "because of a strike by staff who complained of intimidation from clients demanding their cash" (*see* 11/19/19 Reuters article [NYSCEF Doc No. 18]). On November 17, 2019, Reuters and others reported that the Association of Lebanese Banks had announced "a set of temporary directives for commercial banks including a $1,000 cap on weekly withdrawals from U.S. dollar accounts" and restrictions on "hard currency transfers abroad" (*see* 11/17/19 Reuters article [NYSCEF Doc No. 19]). Banks reopened again on November 19 with these previously-announced limitations in place (*see* 11/19/19 Reuters article; *see also* 11/20/19 Reuters article [NYSCEF Doc No. 20]).

In the months that followed, as reflected in press coverage, public statements, and financial analyses, Lebanon's banks engaged with the Central Bank and other governmental bodies in Lebanon and abroad to respond to the crisis (*see* 2/12/20 Reuters article [NYSCEF Doc No. 21]; 4/20/20 Al Arabiya article [NYSCEF Doc No. 22]; 10/9/20 statement by IMF managing director [NYSCEF Doc No. 23]). Between April and August 2020, the Central Bank enacted at least four new circulars restricting further transfers and usage of foreign currency in its effort to continue to manage the banking and financial situation in Lebanon (*see* affidavit of Professor Nasri Antoine Diab, ¶ 20 [NYSCEF Doc No. 24]).

Plaintiff alleges that, as a result of these economic and financial system issues, as of October 2019, the Lebanese banks, including defendants, the Association of Lebanese Banks, and BDL, secretly colluded and agreed not to allow any depositors (other than politically connected depositors, bank executives, and their relatives) to withdraw their USD (complaint, ¶¶ 10, 78). According to plaintiff's expert on Lebanese law, Desiree H. Feghali (Feghali), the banks had no legal right to block depositors' demands for wire transfers (*see* Feghali affirmation

[NYSCEF Doc No. 91], ¶¶ 15, 24). Feghali further asserts that no capital controls have been enacted by Lebanon's authorities (*see id.*), despite the claim by the Governor of Lebanon's Central Bank during a televised interview on December 1, 2020 that wire transfers are supposedly legally and freely available for use by the banks (*see* transcript of Facebook live video [NYSCEF Doc No. 80], at 7). Plaintiff alleges that this corruption exacerbated the liquidity crisis in the Lebanese banking system, and is the subject of ongoing investigations and political unrest within Lebanon (complaint, ¶ 11).

Defendants' Use of New York Correspondent Banks

Plaintiff asserts that defendants' use of New York correspondent accounts played an essential role in the Ponzi scheme, because he maintained his accounts in United States dollars (USD), and his withdrawal and deposits required the use of defendants' New York correspondent accounts (complaint, ¶¶ 34-35). Defendants maintain correspondent accounts with major U.S. financial institutions which they use to accept USD deposits and, before the collapse of the financial system, to effect transfers of USD (*id.*, ¶¶ 18, 31-32). According to plaintiff, defendants purposefully chose to maintain their own correspondent bank accounts in New York to avail themselves of the credibility and reliability of the New York banking system in general, and the largest New York banks in particular, and to be able to transact in USD (*id.*, ¶¶ 25, 27). Plaintiff alleges that defendants heavily promoted their New York correspondent banking relationships to cloak themselves in the legitimacy and strength of massive New York banks, as well as to promote defendants' ability to readily effect international transfers of USD (*id.*, ¶ 18). To date, defendants have closed off plaintiff's access to their New York correspondent accounts, and refused to allow plaintiff to withdraw or transfer his USD outside Lebanon (*id.*, ¶ 15).

The Society for Worldwide Interbank Financial Telecommunication ("SWIFT") is the leading worldwide network for cross-border banking transactions, and operates as follows: when a customer instructs its bank (the "Paying Bank") to make a payment from the customer's account to a recipient in another country (the "Recipient"), the Paying Bank will usually effect the transfer by way of a SWIFT message, sent to a bank with which it has a correspondent relationship (the "Correspondent Bank"). The Paying Bank will hold funds with the correspondent bank in its own name and can instruct the correspondent bank to make payments and transact business on its behalf (*id.*, ¶ 26).

An international payment will usually involve the following steps: (a) the customer instructs the Paying Bank to transfer funds to the Recipient; (b) the Paying Bank deducts the funds from the customer's account; (c) the Paying Bank sends a SWIFT message to the Correspondent Bank, instructing the Correspondent Bank to deduct the funds from the Paying Bank's own account at the Correspondent Bank and credit them to the Recipient; and (d) the Correspondent Bank deducts funds from the account held by the Paying Bank, and credits them to the Recipient's account (*id.*, ¶ 28).

Plaintiff alleges that his deposits with, and withdrawals from, his accounts with defendants were effectuated through their New York correspondent accounts (*id.*, ¶¶ 18, 35). By way of example, plaintiff instructed his employer to instruct its bank in Saudi Arabia to transfer USD to BankMed in Lebanon. The bank used by plaintiff's employer in Saudi Arabia could not transfer USD directly to BankMed in Lebanon. Instead, that bank would debit the employer's account in Saudi Arabia and send a SWIFT message to its correspondent bank in New York, which would debit the correspondent account of the Saudi Arabia bank used by plaintiff's employer and transfer USD to BankMed's New York correspondent bank. BankMed's New

York correspondent bank would then credit BankMed's account in New York, and BankMed would credit plaintiff's account in Lebanon (*id.*, ¶ 33).

Withdrawals or transfers by plaintiff worked the same way. By way of example, plaintiff would instruct BankMed to transfer USD to his bank in Saudi Arabia. BankMed would debit plaintiff's account at BankMed, and send a SWIFT message to its correspondent bank in New York, instructing it transfer funds to the New York correspondent bank account of plaintiff's bank in Saudi Arabia, which in turn would credit plaintiff's account in Saudi Arabia (*id.*, ¶ 34).

Plaintiff's Banking Relationship with BankMed

At some point prior to the inception of plaintiff's relationship with BankMed, plaintiff opened an account and deposited money with the Bank of Beirut in Lebanon (complaint, ¶ 37). In mid-2017, plaintiff transferred approximately $700,000.00 USD from the Bank of Beirut in Lebanon to BankMed in Lebanon (*id.*). By 2018, plaintiff had deposited approximately $1,500,000 USD with BankMed on a "locked" basis for a period of five years (*id.*, ¶¶ 38-39). In exchange for plaintiff's commitment to maintain a "locked" account for five years, BankMed represented it would pay plaintiff interest at the annual rate of 7.75% in USD (*id.*, ¶ 39). BankMed also represented that it would pay the monthly interest into a separate current account from which plaintiff could immediately withdraw and transfer USD freely (*id.*, ¶ 40). Additionally, BankMed represented to plaintiff that he would be entitled to transfer his USD out of BankMed and outside Lebanon immediately, as plaintiff was entitled to break the five-year block on his principal deposit account by paying BankMed 1% of plaintiff's USD in the account (*id.*, ¶ 59). Plaintiff alleges that these representations were knowingly false, as BankMed knew it had insufficient capital (*id.*, ¶ 46).

For a period of time after plaintiff increased his deposit with BankMed to $1,500,000 USD, he transferred the earned interest out of his current account and to his bank in Saudi Arabia in order to pay living expenses (*id.*, ¶ 41). Plaintiff alleges that, each time he did, plaintiff's USD transferred through BankMed's correspondent bank account in New York (*id.*). Plaintiff alleges that, however, in January 2020, BankMed unilaterally and unlawfully ceased paying him interest in USD at the rate of 7.75% annually (*id.*, ¶ 52). Instead, BankMed lowered the overall rate and split the interest between USD and Lira, Lebanon's local currency that has become extremely devalued (*id.*, ¶¶ 52-53). BankMed also prohibited plaintiff from withdrawing his USD from his current accounts at BankMed (*id.*, ¶ 55).

Plaintiff alleges that he has attempted to recover his USD from BankMed, but has been unsuccessful (*id.*, ¶ 63). On July 17, 2020, plaintiff sent a letter to BankMed's General Counsel demanding that BankMed return plaintiff's USD (*id.*, ¶ 65). BankMed refused to comply, and apparently retaliated by changing plaintiff's account summary from showing his money in USD to Lira (*id.*, ¶¶ 65-66).

Plaintiff's Banking Relationship with Bank Audi

In or about mid-2018, plaintiff entered into a banking relationship with Bank Audi and opened a current account (*id.*, ¶ 37). Plaintiff alleges that, in November 2019, Bank Audi induced him to deposit $273,000 USD for three months earning 8% interest annually in USD paid on a monthly basis into his current account, upon the representation that he could readily withdraw or transfer his USD outside Lebanon once the three months expired (*id.*, ¶¶ 71-72). Plaintiff alleges that, in reliance on these representations, he deposited $272,400 USD into his current account with Bank Audi in December 2019 (*id.*, ¶ 81), but that Bank Audi's representations were knowingly false, as Bank Audi knew that plaintiff would be unable to

withdraw or transfer his USD outside Lebanon, and that the interest rates being offered to depositors like plaintiff were unsustainable (*id.*, ¶¶ 73-75). Nevertheless, to perpetrate the Ponzi scheme, Bank Audi falsely represented to plaintiff that it was financially healthy even as Lebanon's banking system began teetering on collapse (*id.*, ¶ 76).

Like BankMed, in January 2020, Bank Audi ceased paying plaintiff interest in USD at the rate of 8% annually (*id.*, ¶ 83). Instead, Bank Audi split the interest between USD and Lira (*id.*). On March 11, 2020 plaintiff instructed Bank Audi to transfer his USD to his account at a bank in Dubai (*id.*, ¶ 85). Plaintiff alleges that Bank Audi initially ignored his instructions, and then ultimately unlawfully seized plaintiff's USD (*id.*, ¶ 86). On March 20, 2020, Bank Audi formally refused plaintiff's instruction (*id.*, ¶ 87). Plaintiff asserts that, to date, he has not been able to recover any of his USD from Bank Audi.

Plaintiff principally alleges that the banks are wrongfully refusing to transfer funds out of Lebanon, in breach of their agreements (complaint, ¶ 15). Plaintiff asserts separate causes of action for fraud, conversion and unjust enrichment against each defendant.

DISCUSSION

In support of their motion for summary judgment, defendants argue that this action, which involves a foreign dispute involving bank accounts opened by a Lebanese national who resides in Saudi Arabia with two Lebanese commercial banks in Lebanon, does not belong in New York. Rather, plaintiff's claims arise from Lebanon's financial crisis, defendants' actions in Lebanon during that crisis, and the legality of those actions under Lebanese law. This court agrees.

A. Personal Jurisdiction

First, plaintiff fails to make the required prima facie showing of personal jurisdiction over defendants. Under New York law, "a New York court may not exercise personal jurisdiction over a non-domiciliary unless two requirements are satisfied: the action is permissible under the long-arm statute (CPLR 302) and the exercise of jurisdiction comports 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.*). As more fully set forth below, both prerequisites are lacking here. Accordingly, this action must be dismissed for lack of jurisdiction.

1. Long-Arm Jurisdiction

The parties agree that the relevant long-arm statute is CPLR 302 (a) (1). Pursuant to that statute, "a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent: transacts any business within the state" (CPLR 302 [a] [1]). "In order to determine whether personal jurisdiction exists under CPLR 302 (a) (1), a court must decide (1) whether the defendant transacts any business in New York and, if so, (2) whether the cause of action arises from such a business transaction" (*Licci v Lebanese Can. Bank* (*Licci I*), 20 NY3d 327, 334 [2012] [quotation marks and citation omitted]).

Plaintiff premises long-arm jurisdiction entirely on defendants' correspondent bank accounts with New York banks, contending that they purposefully conduct business in New York through these correspondent accounts (*see* complaint, ¶ 23 ["(d)efendants are subject to personal jurisdiction in the State of New York as a result of their purposeful and continuous use of correspondent banking accounts in the County of New York"]). Plaintiff contends that the maintenance and use of these correspondent accounts suffices to establish personal jurisdiction in this case (*see id.*, *see also id.*, ¶ 30 ["Defendants' use of the correspondent banks in New York to

transact with Malaeb amply supports the constitutional exercise of personal jurisdiction over Defendants"]). The Complaint contains no allegations that defendants have any other connections with New York (no offices, no employees or representatives, no operations).

"[S]tanding by itself, a correspondent bank relationship, without any other indicia or evidence to explain its essence, may not form the basis for long-arm jurisdiction" (*Amigo Foods Corp. v Marine Midland Bank-N.Y.*, 39 NY2d 391, 396 [1976]). To establish personal jurisdiction over a foreign bank, the plaintiff must plead facts showing that (1) the foreign bank's maintenance and use of the correspondent account was purposeful; and (2) the existence of a nexus or substantial relationship between the claim and use of the correspondent account (*Licci I*, 20 NY3d at 338-339). Plaintiff's allegations do not satisfy that standard.

Licci I involved claims brought by several dozen citizens of the U.S., Canada and Israel who resided in Israel and were injured, or whose family members were killed or injured, in rocket attacks by Hezbollah. The plaintiffs sued Lebanese Canadian Bank (LCB) and American Express Bank (AmEx), asserting that LCB, through its correspondent bank account at AmEx in New York, assisted Hezbollah's terrorist attacks by "facilitating international monetary transactions" through Hezbollah's financial arm (*id*. at 330-31). The Court of Appeals held that "complaints alleging a foreign bank's repeated use of a correspondent account in New York on behalf of a client – in effect a 'course of dealing' – show purposeful availment of New York's dependable and transparent banking system, the dollar as a stable and fungible currency, and the predictable jurisdictional and commercial law of New York and the U.S." (*id*. at 339 [internal citation omitted]; *accord Averbach*, 2020 WL 486860, at *7 [where plaintiff alleged that defendant banks aided and abetted terrorist attacks in Israel by providing financial services to Hamas, court found that the "crediting of funds in a correspondent account is volitional use of

the account, and repeated crediting of funds is a course of conduct sufficient to demonstrate purposeful use"]; *Bartlett v Societe Generale De Banque Au Liban S.A.L.*, 2020 WL 7089448, *5 [ED NY 2020] [where Lebanese bank executed transfers of funds through their correspondent bank accounts in New York, and the funds "in part" funded Hezbollah's terrorist attacks, court found that because the Lebanese bank did not "contend that they accepted those transfers 'once or twice by mistake,'" the use of the correspondent bank account in New York was sufficiently purposeful]; *see also Rushaid v Pictet & Cie*, 28 NY3d 316, 327 [2016] [the "(r)epeated, deliberate use" of New York based correspondent banks "by [a] foreign bank on behalf and for the benefit of a customer . . . demonstrates volitional activity constituting transaction of business" in New York]).

Accordingly, the frequency and deliberate nature of the foreign bank's use of its correspondent account is critical to the assessment of whether the foreign bank purposely availed itself of the advantages of conducting business in New York (*Licci v Lebanese Canadian Bank* (*Licci II*), 732 F3d 161, 168 [2d Cir 2013]; *see Licci I*, 20 NY3d at 340 [focusing on the allegations that LCB used its New York correspondent account "dozens" of times "to effect its support of Shahid and shared terrorist goals," not "once or twice by mistake"]; *see also Amigo Foods Corp.*, 39 NY2d at 396 [finding no personal jurisdiction where there was only a single fund transfer through correspondent account that the defendant bank rejected at target account holder's direction]).

Plaintiff contends it has satisfied the first prong of the long-arm jurisdiction test, because, pursuant to this line of cases, the fact that the banks deliberately used the New York correspondent banks to take advantage of the U.S. banking and financial systems is sufficient to confer jurisdiction under CPLR 302 (a) (1). This contention lacks merit, as the cases cited by

plaintiff involve much more frequent and deliberate correspondent account activity than that alleged here. For instance, *Licci I* and *Bartlett* involved "dozens" of New York correspondent account transactions, while *Averbach* involved "twenty-three" transactions (*see Licci I*, 20 NY3d at 332; *Bartlett*, 2020 WL 7089448 at *5; *Averbach,* 2020 WL 486860 at *5). In addition, the courts in those cases found that the defendant banks had repeatedly approved deposits and the movement of funds through a correspondent account (*see id*.).

Here, in contrast, with respect to Bank Audi, there is one alleged transfer of funds from Saudi Arabia to Lebanon that traversed a BankMed correspondent account, as well as inter-account transfers of interest from BankMed to him going through New York (*see* complaint, ¶¶ 33-34). Plaintiff further alleges that his initial deposit with Bank Audi of $272,400 "originated in Saudi Arabia" and made its way to Lebanon through a correspondent account (*id*., ¶ 82). These sparse allegations fall far short of the deliberate and repeated correspondent banking activity set forth in the above-cited cases (*see Daou v BLC Bank, S.A.L.*, Civ. No. 1:20-cv-04438, ECF No. 97, at 23 [SD NY 4/9/21] [court dismissed for lack of personal jurisdiction where "(p)laintiffs point to only four instances in which [Lebanese bank] used its New York correspondent account in connection with the plaintiffs," which "is too infrequent to establish that the defendant transacted business with the plaintiffs in New York"]). As such, the correspondent account transfers at issue between accounts in Lebanon and Saudi Arabia do not amount to New York courses of dealing for purposes of the long-arm statute.

Plaintiff's allegation that defendants promoted their New York correspondent banking relationships as part of the allure of doing business with them in Lebanon (*see complaint* ¶ 18) is also insufficient to satisfy the first prong. Even if the alleged promotion focused on getting business *in New York*, which it did not, the "mere solicitation of business within the state does

not constitute the transaction of business within the state, unless the solicitation in New York is supplemented by business transactions occurring in the state" (*O'Brien v Hackensack Univ. Med. Ctr.*, 305 AD2d 199, 201 [1st Dept 2003]; *accord Paterno v Laser Spine Inst.*, 112 AD3d 34, 41 [2d Dept 2013], *affd* 24 NY3d 370 [2014]).

With regard to the second factor, whether there is a nexus between the plaintiff's claim and the defendant's use of the correspondent account, there must be "a relatedness between the transaction and the legal claim such that the latter is not completely unmoored from the former, regardless of the ultimate merits of the claim" (*Licci I*, 20 NY3d at 339). Importantly, at least one of the elements of the pleaded cause of action must arise from the use of the correspondent account (*see id*. at 341 [302 (a) (1) "does not require that every element of the cause of action pleaded must be related to the New York contacts; rather, where at least one element arises from the New York contacts, the relationship between the business transaction and the claim asserted supports specific jurisdiction under the statute"]). For example, in *Khalife v Audi Saradar Private Bank SAL* (129 AD3d 468 [1st Dept 2015]), the court dismissed claims against a foreign bank for lack of personal jurisdiction where there was "no articulable nexus or substantial relationship between the securities transactions executed through [the] bank's omnibus trading account with a U.S. bank account and the freezing of plaintiffs' bank accounts in Lebanon by [the] bank and the Lebanese authorities" (*id*. at 468). The court highlighted the fact that "none of the four causes of action . . . contain any element relying upon the [defendant's] U.S. securities transactions" (*id*.; *accord Avilon Automotive Group v Leontiev*, 2020 NY Slip Op 30837[U], *17 [Sup Ct, NY County 2020] [dismissing complaint on ground that plaintiffs failed "to show a substantial relationship between defendant's alleged New York contacts and plaintiffs' claims" because "(p)laintiffs' jurisdictional claim rests solely on Leonid's alleged receipt of payments

from New York bank accounts, but claims arise from loan agreements between plaintiffs and nonparty foreign entities and alleged fraudulent transfers involving a foreign trust"] and "(p)laintiffs' claims are untethered from Leonid's alleged conduct as the complaint fails to allege that Leonid was paid from the Alleged Loaned Funds at issue or that plaintiffs are connected in any way to the New York bank accounts or to Leonid"]; *see also Daou, S.A.L.*, Civ. No. 1:20-cv-04438, ECF No. 97, at 24 [dismissing on ground that "the events at the core of the complaint all took place in Lebanon"]).

Likewise, here, none of plaintiff's three causes of action against each bank defendant rely upon transfers of funds through New York correspondent accounts. Indeed, as to Bank Audi, plaintiff do not allege that any transfer he requested to or from Bank Audi went through a New York correspondent account. For instance, plaintiff's fraud claims are based on alleged wrongful inducement to deposit funds in Lebanon, and the alleged refusal to release funds from Lebanon (*see* complaint, ¶¶ 97, 118). His conversion claims are premised on refusal to transfer funds out of Lebanon (*see id.*, ¶¶ 104, 125). His unjust enrichment claims similarly arise from refusal to satisfy plaintiff's demands to have funds transferred from Lebanon (*see id.*, ¶¶ 110, 131). Not a single element of any of these claims is tethered to defendants' New York correspondent accounts, and removing the correspondent accounts from the equation has no impact on plaintiff's claims. When, as here, the allegations involve transfers from a foreign entity to non-domiciliaries, and the alleged payments in and out of a New York bank account could have been made anywhere without changing the nature of plaintiffs' allegations, the use of a New York bank account fails to establish jurisdiction (*see DirecTV Latin Am., LLC*, 691 F Supp2d at 423-24, quoting *Leema Enters., Inc. v Willi,* 575 F Supp 1533, 1537 [SD NY 1983] [dismissing for lack of jurisdiction on ground that, "(e)ven if some individuals received kickbacks from cash

wired into and out of a bank account at a New York bank, the payments to these persons 'could have been made anywhere and it would not have changed the nature of the plaintiffs' allegations'"]).

Plaintiff's conclusory claim in opposition to the present motion that defendants "used the correspondent accounts to steal" his money is insufficient (*see* plaintiff's opposition [NYSCEF Doc No. 91], at 10 [arguing that the "'relatedness' between the Banks' use of their correspondent bank accounts and Plaintiffs' claims is far closer than the terrorism cases" because "(t)he banks in the terrorism cases facilitated the attacks carried out by others, while the Banks in this case used the correspondent accounts to steal the money themselves"]). The cases that plaintiff cites in support of this proposition principally involve the alleged use of New York accounts to finance terror or launder money, and are inapposite.

For instance, the plaintiffs in the terrorism cases alleged that the banks utilized correspondent accounts to transfer funds for terrorist organizations. The banks' alleged liability arises from the movement of funds through the correspondent accounts (*see, e.g., Averbach*, 2020 WL 486860, at *8 [alleging "aid(ing) and abet(ing)" of Hamas terrorism by sending numerous wire transfers for Hamas's benefit through U.S. correspondent banks]; *Licci II*, 732 F3d at 165–66 [alleging correspondent account use to wire funds on behalf of Hizballah, knowing that such transfers would "enable Hizballah" to carry out attacks]). The New York transfers themselves were an element of the plaintiffs' claims (*see Licci I*, 20 NY3d at 340 [finding that plaintiff's allegations "that LCB engaged in terrorist financing by using its correspondent account in New York to move the necessary dollars", taken as true, "arguably (demonstrates that LCB) violated duties to plaintiffs" under the Anti-Terrorist Act, and thus, establish the "'articulable nexus' or 'substantial relationship' necessary for purposes of personal

jurisdiction"]; *Averbach*, 2020 WL 486860, at *7 ["Plaintiffs also have properly alleged that the aid provided to Hamas came about, in part, via money transfers through CAB's New York correspondent accounts," which the court found was sufficient to establish an aiding and abetting claim under the Justice Against Sponsors of Terrorism Act]). Similarly, in *Al Rushaid*, the defendant laundered money through New York to effect a kickback scheme (*Al Rushaid Parker Drilling Ltd. v Byrne Modular Bldgs. LLC*, 180 AD3d 577, 579 [1st Dept 2020]). The flow of funds through New York accounts was an element of the plaintiffs' claims (*see id.*).

Here, plaintiffs' claims do not arise from, or depend on, the correspondent accounts, the only alleged connection to New York. Rather, the correspondent accounts are merely incidental to the claims asserted. Plaintiffs' transfers through the New York correspondent accounts have no bearing on liability here, in contrast to *Licci* and other cases where the correspondent account transfers were the *actus reus* of the banks' liability.

Accordingly, there is no "substantial nexus," and defendants are not subject to personal jurisdiction under New York's long-arm statute (*see Georgakis v Excel Mar. Carriers Ltd.*, 72 AD3d 494, 494 [1st Dept 2010] [finding that "(e)ven assuming that defendant transacted business in New York, CPLR 302 (a) (1) does not authorize the courts to exercise jurisdiction over it, because there is no relationship between defendant's transaction of business and plaintiff's claims against defendant"]; *Leema Enters., Inc.*, 575 F Supp at 1537 [no personal jurisdiction where cash payment was made to defendant's New York bank account, because action was directly rooted in fraudulent misrepresentation causing payment, not in receipt of funds]; *see also Johnson v UBS AG*, 791 Fed Appx 240, 242 [2d Cir 2019] ["neither the complaint nor any of the other documents in the record suggest that UBS's connections with New York relate to the circumstances of this case"]; *Kashef v BNP Paribas SA*, 442 F Supp 3d 809, 821 [SD NY 2020]

["'every major fraud case in the world in which dollars are involved (does not) belong() in the New York courts'"], quoting *Mashreqbank PSC v Ahmed Hamad Al Gosaibi & Bros. Co.*, 23 NY3d 129, 137 [2014]).

2. Due Process

Nor would the exercise of personal jurisdiction over the defendant banks satisfy well-established principles of due process, which require that defendants could "reasonably foresee" facing suit in the forum (*Copp v Ramirez*, 62 AD3d 23, 30-31 [1st Dept 2009]). In addition, due process requires "'that the maintenance of the suit not offend traditional notions of fair play and substantial justice'" (*Williams*, 33 NY3d at 528 [citation omitted]). Only when the exercise of jurisdiction is "reasonable under the particular circumstances of the case" will it comport with fair play and substantial justice (*Blockchain Luxembourg S.A. v Paymium, SAS*, 2019 WL 4199902, *4 [SD NY 2019]). When it does not comport, the case must be dismissed.

Here, given that defendants do not conduct business in New York, and the accounts in question were opened in Lebanon by a Lebanese national with no alleged connection with New York, defendants could not have reasonably "'forsee[n] being haled into court'" in New York (*Matter of Veon Ltd. Secs. Litig.*, 2018 WL 4168958, *5 [SD NY 2018]; *see Copp*, 62 AD3d at 30-31).

In addition, in assessing due process in the personal jurisdiction context, "[c]ourts require . . . causation depending on the extent of a defendant's contacts with the forum" (*SPV Osus Ltd. v UniCredit Bank Austria*, 2019 WL 1438163, *6 [SD NY 2019] [considering not just the degree of the defendant's contacts but whether a sufficient causal relationship exists between the contacts and the suit-related conduct]). The U.S. Supreme Court has explained that, "[t]he inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant

'focuses on the relationship among the defendant, the forum, and the litigation'" (*Walden v Fiore*, 571 US 277, 283-284 [2014] [citation omitted] ["defendant's suit-related conduct must create a substantial connection with the forum State"]). "'[W]here the defendant has had only limited contacts with the [forum] it may be appropriate to say that he will be subject to suit in that [forum] only if the plaintiff's injury was proximately caused by those contacts'" (*SPV Osus Ltd.*, 882 F3d at 344 [citation omitted]; *see Gucci Am., Inc. v Weixing Li*, 768 F3d 122, 141 [2d Cir 2014] [scope of specific jurisdiction is limited to claims that "arise[] out of or relate to the defendant's contacts with the forum"]).

Here, plaintiff does not allege how any of the alleged New York correspondent account activity — the only purported tether to this jurisdiction — proximately caused his alleged injury. Due process considerations as to defendants in terrorism financing cases are inapposite (*see* plaintiff's opposition, at 11-12). The United States has an obvious interest in adjudicating the alleged use of its financial systems to facilitate terrorist activity (*see e.g. Licci II*, 732 F3d at 174 [weighing "the United States' and New York's interest in monitoring banks and banking activity to ensure that its system is not used as an instrument in support of terrorism, money laundering, or other nefarious ends"]). Courts have found that those engaged in terrorism financing through U.S. banks should reasonably foresee being sued in U.S. courts (*see e.g., id.*). The same applies for actors in other criminal schemes run through U.S. banks (*see e.g. Al Rushaid*, 28 NY3d at 331). By contrast, this case involves straightforward commercial bank transfer activity. On the face of the complaint, the banks could not have reasonably foreseen being sued in New York due to this routine correspondence activity.

Accordingly, due process precludes the exercise of personal jurisdiction over the banks.

B. Forum Non Conveniens

The doctrine of forum non conveniens provides an independent ground for dismissal. That doctrine "permits a court to dismiss an action when, although it may have jurisdiction over a claim, the court determines that 'in the interest of substantial justice the action should be heard in another forum'" (*National Bank & Trust Co. of N. Am. v Banco De Vizcaya*, 72 NY2d 1005, 1007 [1988] [citation omitted]; CPLR 327 [a] ["When the 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"]). It reflects the basic principle that "our courts need not entertain causes of action lacking a substantial nexus with New York" (*Martin v Mieth*, 35 NY2d 414, 418 [1974]; *accord Economos v Zizikas*, 18 AD3d 392, 393 [1st Dept 2005] ["courts are not required to use their resources to hear cases that have no connection to their state"]).

To decide "whether to retain jurisdiction or not," New York courts must consider an array of factors. These factors include (1) the residence of the parties, (2) the situs of the core transactions, (3) the location of any documents and the majority of witnesses, (4) the potential hardship to the defendant from litigating the claims in New York, (5) the burden on New York courts and (6) the existence of an adequate alternative forum (*see Pahlavi*, 62 NY2d at 479; *Economos*, 18 AD3d at 394). No factor is dispositive and "[a]t bottom, the analysis is about whether the action has a 'substantial connection to this State'" (*BSR Fund, S.A., v Jagannath*, 2020 NY Slip Op 30810[U], *6 [Sup Ct, NY County 2020], quoting *Blueye Navigation, Inc. v Den Norske Bank*, 239 AD2d 192, 192 [1st Dept 1997]).

In weighing these considerations, "[the] plaintiff's choice of forum is entitled to strong deference" (*JTS Trading Ltd. v Asesores*, 178 AD3d 507, 507 [1st Dept 2019]), but it "is not

dispositive" (*Wyser-Pratte Mgt. Co., Inc. v Babcock Borsig AG*, 23 AD3d 269, 270 [1st Dept 2005]). However, where "none of the plaintiffs is a New York resident," which is the case here, dismissal on forum non conveniens grounds may be appropriate (*Estate of Kainer v UBS AG*, 2017 NY Slip Op 32316[U], *18 [Sup Ct, NY County 2017], *affd*, 175 AD3d 403 [1st Dept 2019]; *see, e.g.*, *JTS Trading Ltd.*, 178 AD3d at 507 [affirming dismissal where "the parties are from Hong Kong and Mexico"]; *see also Piper Aircraft Co. v Reyno*, 454 US 235, 255-56 [1981] ["When the home forum has been chosen, it is reasonable to assume that this choice is convenient. When the plaintiff is foreign, however, this assumption is much less reasonable"]).

Evaluating the relevant factors here, the court concludes that this action should be dismissed on the ground of forum non conveniens. The bottom line is that this litigation does not have a substantial nexus to New York and the allegations of the complaint point distinctly to Lebanon (*see Confederacion Sudamericana de Futbol v International Soccer Mktg., Inc.*, 161 AD3d 581, 582 [1st Dept 2018] [upholding finding that "New York is not a convenient forum" notwithstanding the alleged use of "New York bank accounts to make unlawful payments"]; *see also Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 483 [1984] [affirming dismissal on forum non conveniens grounds where, inter alia, "the record does not demonstrate a substantial nexus between this State and plaintiff's cause of the action"]; *Shin–Etsu Chem. Co., Ltd. v 3033 ICICI Bank Ltd.*, 9 AD3d 171, 176 [1st Dept 2004] ["'our courts should not be under any compulsion to add to their heavy burdens by accepting jurisdiction of a cause of action having no substantial nexus with New York'"] [citation omitted]).

1. **Residency of the Parties**

The residence of the parties weighs strongly in favor of dismissal. All of the parties to this action are located outside of New York. Plaintiff is a Lebanese national who resides and

works in Saudi Arabia (complaint, ¶¶ 9, 20). He has no alleged connection with New York. The defendants are Lebanese commercial banks (*id.*, ¶¶ 21–22). They do not have offices, operations, or employees in New York. (Ex. 2, ¶ 8; Ex. 3, ¶ 8). The predominance of foreign residents "is entitled to . . . substantial weight" in the forum non conveniens analysis (*Wyser-Pratte Mgt. Co.*, 23 AD3d at 270 [dismissing action where five of nine defendants were German residents]; *see also BSR Fund*, 2020 NY Slip Op 30810[U], *7 [dismissing action, even where defendants included residents of New Jersey and New York, one of whom worked out of a New York office, because "many of the parties to this action, including the alleged masterminds behind the Fund as well as its alleged victims, are located outside New York"]; *Bluewaters Comm. Holdings, LLC v Ecclestone*, 2014 NY Slip Op 30123[U], *13 [Sup Ct, NY County 2014] [dismissing action where "(n)one of the individual or corporate defendants are United States citizens"]).

2. Situs of the Transaction

As the critical events at issue here are not alleged to have taken place in New York, the underlying transaction here exhibits a "strong foreign nexus" (*Wyser-Pratte Mgt. Co.*, 23 AD3d at 270; *Pahlavi*, 62 NY2d at 479). As noted, the bank accounts at issue are with Lebanese commercial banks in Lebanon (*see* complaint, ¶¶ 21–22). Plaintiff deposited money in his accounts at the banks (or others deposited money in his accounts at the banks) from elsewhere in Lebanon or from Saudi Arabia (*see id.*, ¶¶ 38, 82). Plaintiff also mentions making deposits in Dubai and Switzerland (*id.*, ¶¶ 44, 63, 85). There are no allegations that any negotiations or discussions between the parties occurred in New York.

3. Location of Witnesses/Documents

Given that the situs of the transaction is Lebanon, material witnesses, relevant documents, and other evidence for plaintiff's claims, as well as the defenses thereto, are likely to be located outside of the United States. As defendants are commercial Lebanese banks, any relevant bank documents are likely located in Lebanon (*see* complaint, ¶¶ 21–22). The banks' employees who communicated or conducted business with, or for plaintiff, are located in Lebanon (*see* complaint, ¶¶ 37, 71). Plaintiff and, presumably, his documents are in Saudi Arabia or Lebanon. Accordingly, this factor weighs in favor of dismissal as well (*see Bewers v American Home Prods. Corp.*, 99 AD2d 949, 950 [1st Dept 1984] [dismissing on forum non conveniens grounds because "(t)he vast majority of witnesses and documentation . . . are in England"], *affd*, 64 NY2d 630 [1984]; *Shin-Etsu Chem. Co.*, 9 AD3d at 178 ["Any witness with personal knowledge of the letter of credit [at issue] is located overseas"]; *Bluewaters*, 2014 NY Slip Op 30123[U] at *13 [dismissing case where "most, if not all, of the key fact witnesses are located in Europe"]).

4. Burden on Defendants and the New York Court System

Litigating this dispute in New York would burden both defendants and the New York court system. The banks do not have offices, operations, or employees in New York. If they are required to litigate here, litigation costs would likely be significant, as experts would be required on Lebanon's banking and legal system and other Lebanon-related issues, and the banks' employees may be required to travel to the U.S. for depositions and court proceedings.

This litigation will also put an unnecessary burden on the New York court system, because the testimony of the parties, as well as the communications between them, will all require translation of documents and testimony from Arabic into English (*see Troni v Banca*

Popolare Di Milano, 129 AD2d 502, 503-504 [1st Dept 1987] [affirming dismissal where court considered, among other things, "the need to translate documents from a foreign language"]). Interpreting key documents and testimony would likely add substantial time and expense to the litigation, and "the taxpayers of this State should not be compelled to assume the heavy financial burden . . . when their interest in the suit and the connection of its subject matter to the State of New York is so ephemeral" (*Pahlavi*, 62 NY2d at 483).

Application of Lebanese law "complicate[s] adjudication of the dispute in New York" and also supports dismissal (*see Spencer Stuart Human Resources Consultancy (Shanghai) Co. Ltd. v American Indus. Acquisition Corp.*, 2017 WL 4570791, *5 [SD NY 2017]). While the court can undertake to determine Lebanese law, this effort is best left to Lebanese courts which are at the forefront of addressing depositor complaints against Lebanese banks and answering related questions of Lebanese law (*see Estate of Kainer*, 175 AD3d at 405 [where the parties "not only dispute the applicable foreign law, but discuss the substance of the law," the foreign forum is best-suited to hear the dispute]; *Shin-Etsu*, 9 AD3d at 178 [finding that India has a "keen() interest() in governing the affairs of its financial institutions to insure uniformity and consistency in the processing of financial transactions and in the interpretation of . . . banking statutes and laws"]; *Carlstrom v Livtorsakring*, 2020 WL 7342753, *8 [SD NY 2020] [Sweden "best equipped" to decide "significant questions of Swedish law looming in the background of this litigation"]).

5. Adequate Alternative Forum

Plaintiff argues that, given the current political climate, litigating against Lebanese banks in Lebanon would be dangerous for plaintiff. Plaintiff also argues that the Lebanese courts have colluded with the banking sector by refusing to enforce Lebanese law, such that there would be

no opportunity for a genuine remedy. Plaintiffs argue that, thus, this action cannot be dismissed upon forum non conveniens grounds.

The court does not have sufficient evidence to accept Plaintiff's broad condemnation of Lebanon's court system. In any event, "an alternative forum is not absolutely required under New York law, as opposed to federal law" (*Flame S.A. v Worldlink Intl. (Holding) Ltd.*, 107 AD3d 436, 438 [1st Dept 2013]; *see also Estate of Kainer v UBS AG*, 175 AD3d 403, 405-406 [1st Dept 2019] ["absence" of "a suitable alternative forum . . . does not require a New York court to retain jurisdiction"]; *Huani v Donziger*, 129 AD3d 523, 523 [1st Dept 2015] [confirming that New York does not require an adequate alternative forum]).

Moreover, whatever interest New York conceivably has in what is, essentially, a private commercial dispute, certainly "pales in comparison with that of [Lebanon]" which "possesses a strong interest in regulating the conduct of banks within its borders" (*LaSala v UBS*, AG, 510 F Supp 2d 213, 229 [SD NY 2007]). Lebanon certainly has a clear overriding public policy interest in adjudicating these disputes, given the role of Lebanon's current financial and banking situation (*see e.g. Foster Wheeler Iberia S.A. v Mapfre Empresas S.A.S.*, 15 Misc 3d 1112[A], 2007 NY Slip Op 50619[U], *5 [Sup Ct, NY County 2007) [dismissal "strongly" supported where the "dispute implicates [the country's] national interest in enforcing its own . . . laws"]).

As to New York, plaintiff proffers only a generic interest in protecting this State's banking system. However, "New York's interest in its banking system 'is not a trump to be played whenever a party to such a transaction seeks to use our courts for a lawsuit with little or no apparent contact with New York'" (*Mashreqbank PSC*, 23 NY3d at 137 [citation omitted]). The sole alleged connection to New York is a few correspondent account transactions. It is difficult to see how the "integrity" of New York's banking system is at stake (*see id.* [rejecting

the assumption that "any passage of funds through New York banks automatically implicates New York's 'compelling interest in the protection of [its] banking system"'] [citation omitted]; *see also Al Rushaid*, 180 AD3d at 579 ["New York is not a convenient forum in cases where the sole connection to New York was the passage of wired funds through a correspondent bank in the state"]).

* * * *

The Court of Appeals decision in *Mashreqbank* confirms that dismissal is warranted on forum non conveniens grounds. The Court found that action to be "one of the relatively uncommon [cases] in which dismissal on forum non conveniens grounds [wa]s required as a matter of law" (23 NY3d at 138). In *Mashreqbank*, as here, the parties were not New York residents, there were no important New York witnesses or documents, New York law did not apply, the property at issue was outside New York, and other forums were available (*id*. at 138–39). In response to the plaintiff's arguments there, the Court of Appeals emphasized that the "use of New York banks to facilitate dollar transfers" at the heart of that case, was insufficient grounds for continuing the litigation in New York (*id*. at 138). The Court noted that, outside these transfers, "no other circumstance support[ed] an argument that New York is an appropriate forum" (*id*. at 139).

Similarly, in *Al Rushaid*, the Appellate Division, First Department affirmed dismissal of bribery claims involving foreign companies, including a Swiss private bank, on forum non conveniens grounds. The plaintiffs premised the New York forum on the transmittal of the alleged bribery payments at issue through New York bank accounts (180 AD3d at 578). The court emphasized the fact that none of the parties were New York citizens or residents or had a principal place of business in New York, the alleged conduct primarily occurred in the UAE,

Saudi Arabia, and Switzerland, the bulk of the relevant documentary evidence and most witnesses were located outside of New York, foreign law would likely govern, an alternative forum existed with a greater connection to the action, including an interest in regulating a domestic bank, and "the sole New York connection [is] the fleeting presence of . . . bribery funds at a nonparty New York correspondent bank" (*id.* at 578-579; *see also Norex Petroleum Ltd. v Blavatnik*, 151 AD3d 647, 648 [1st Dept 2017] [dismissing where, although the individual defendants may have wired funds from New York, the tort action involved foreign parties, the key events underlying the claims occurred in Russia, and the majority of witnesses and documents were located in Russia]; *Filho v Borges*, 187 AD3d 406, 406 [1st Dept 2020] [dismissing in favor of Brazil forum where nine of the ten parties were located outside United States, the fraudulent scheme was allegedly designed and carried out by foreigners, the critical events were not alleged to have taken place in New York, many of the key witnesses and documents were likely located outside of New York, all the individual parties whose testimony could prove decisive live in Brazil, and the courts of Brazil could provide a convenient, alternative forum]; *World Point Trading PTE v Credito Italiano*, 225 AD2d 153, 156 [1st Dept 1996] [dismissing action brought by Italian plaintiff against Italian bank doing business in New York relating to international transaction requiring payment be made through New York correspondent bank]).

In sum, the allegations set forth in the complaint all point to Lebanon. The tenuous connection to New York is outweighed by the location of the parties, events, and likely evidence, the burden on defendants and the courts, and the fact that a more convenient forum may be available. As such, defendants' motion to dismiss on the ground of forum non conveniens is granted.

C. Forum Selection Clauses

Finally, defendants contend that plaintiff's agreements with the banks contain clear and unambiguous mandatory forum selection clauses that require plaintiff to bring the claims alleged in this action in Lebanon (*see Du Quenoy v American Univ. of Beirut*, 828 Fed Appx 769 [2d Cir 2020] [affirming dismissal based on Lebanon forum selection clause]; *Daou*, Civ. No. 1:20-cv-04438, at 12-13 [dismissing based on Lebanon forum selection clause]). The Court finds that the forum selection provisions provide an independent ground for dismissing the complaint as against BankMed, but not (at this point) as against Bank Audi.

"[I]t is the well-settled 'policy of the courts of this State to enforce contractual provisions for . . . selection of a forum for litigation'" (*Sterling Natl. Bank v East Shipping Worldwide, Inc.*, 35 AD3d 222, 222 [1st Dept 2006] [citation omitted]; see *Du Quenoy v American Univ. of Beirut*, 2019 WL 4735371, *7 [SD NY 2019] ["'New York has a strong public policy of enforcing forum selection clauses so that parties are able to rely on the terms of the contracts they make'"] [citation omitted]). These provisions are "prima facie valid" "unless shown . . . to be unreasonable" (*Siroy v Jobson Healthcare Information LLC*, 51 Misc3d 1225[A], 2016 NY Slip Op 50818[U], *2 [Sup Ct, NY County 2016], citing *Brooke Grp. Ltd. v JCH Syndicate 488*, 87 NY2d 530, 534 [1996]). New York courts regularly dismiss actions in the face of forum selections clauses designating other forums as the exclusive venue for the subject dispute (*see e.g. New Greenwich Litig. Trustee, LLC v Citco Fund Servs. (Europe) B.V.*, 145 AD3d 16, 28 [1st Dept 2016]).

1. BankMed

Plaintiff acknowledges that he entered a contractual "banking relationship with BankMed," in "mid-2017" (complaint, ¶ 37). On June 30, 2017, at the outset of the parties'

relationship, plaintiff executed BankMed's General Terms and Conditions (the BankMed GTC) to govern that relationship (NYSCEF Doc No. 26). The BankMed GTC states that "when not provided for herein," the parties' relationship is subject "to the provisions of the Lebanese Law, the Banking Regulations, and the banking rules and norms" (*id.*, at 1). Paragraph 24 of the BankMed GTC, entitled "Competent Courts" states: "[t]he Courts of Beirut shall have exclusive jurisdiction to settle any conflict or dispute between BankMed and the Client. However, BankMed shall have the right to institute legal proceedings before any other competent Court in Lebanon or abroad" (*id.*, ¶ 24).

Pursuant to well-settled New York law, the term "exclusive jurisdiction" is mandatory, and means that any claim levied by plaintiff against BankMed must be litigated in Beirut, Lebanon (*see Micro Balanced Prods. Corp. v Hlavin Indus.*, 238 AD2d 284, 284 [1st Dept 1997] [affirming dismissal of New York state action because "forum selection clause of (defendant's) agreement with plaintiff, which provides: 'The courts of Tel–Aviv shall have jurisdiction over any matter arising from or concerning this Agreement'" is mandatory]; *Sydney Attractions Group Pty Ltd. v Schulman*, 74 AD3d 476, 476 [1st Dept 2010] [forum selection clause providing exclusive jurisdiction to courts in Australia enforced]; *Seward v Devine*, 888 F2d 957, 962 [2d Cir 1989] [language that court "shall have jurisdiction" is mandatory]; *Walker, Truesdell, Roth & Assocs., Inc. v Globeop Fin. Servs. LLC*, 43 Misc 3d 1230[A], 2013 NY Slip Op 52318[U], *5 [Sup Ct, NY County 2013], *affd sub nom. New Greenwich Litigation Trustee, LLC v Citco Fund Servs. (Europe) B.V.*, 145 AD3d 16 [2016] ["Courts have repeatedly found forum selection clauses mandatory if they provide that a specified forum 'shall' hear a matter or that the forum is 'exclusive'"]).

In opposition, plaintiff contends that the BankMed forum selection clause is unenforceable. The presumption of enforceability of a forum selection clause may be rebutted when the resisting party makes a sufficiently strong showing that enforcement would be "unreasonable or unjust" (*Du Quenoy*, 828 Fed Appx at 771). "Specifically, a forum selection clause will not be enforced only if '(1) its incorporation was the result of fraud or overreaching; (2) the law to be applied in the selected forum is fundamentally unfair; (3) enforcement contravenes a strong public policy of the forum in which suit is brought; or (4) trial in the selected forum will be so difficult and inconvenient that the plaintiff effectively will be deprived of his day in court'" (*id.* [citation omitted]).

Plaintiff contends that the fourth exception is applicable here. Specifically, plaintiff's objection to enforcement is that litigation in Lebanon would be "unreasonable or unjust . . . due to the current crisis in Lebanon, and the documented mistreatment of litigants in Lebanon," which would essentially deny him his day in court (plaintiff's opposition at 14). Plaintiff also raises concerns about his personal safety were he to litigate in Lebanon (*see id.*).

However, plaintiff's "'bare denunciations and sweeping generalizations'" regarding the Lebanese forum do not support rebutting the presumption of the forum selection clauses' enforceability (*Matter of Monegasque De Reassurances S.A.M. (Monde Re) v Nak Naftogaz of Ukraine*, 311 F3d 488, 499 [2d Cir 2002] [citation omitted]). *Du Quenoy* is directly on point. In that case, the Second Circuit affirmed dismissal of the complaint based on a forum selection clause designating Lebanon as the exclusive forum for adjudicating disputes (*see* 828 Fed Appx at 772-773). Du Quenoy is a U.S. citizen whose lawsuit arose from his work for American University of Beirut ("AUB") (*Du Quenoy*, 2019 WL 4735371 at *1). His arguments opposing the Lebanon forum parallel those plaintiff makes here. He asserted that "AUB enjoys significant

prominence and political clout in Lebanon," and that Lebanon's new prime minister was a former AUB administrator (*id*. at *7). He claimed that an American litigating against a powerful local institution had no chance of success (*id*.). He asserted that "political unrest in Lebanon would defeat the Lebanese judiciary's ability to adjudicate his claims" and made assertions about incidents of physical harm to individuals, flagging travel advisories and other reports, and "allegations concerning corruption within the Lebanese judiciary" (*see Du Quenoy*, 828 Fed Appx at 772–73). These arguments failed there, and likewise fail here, with the Court specifically finding that:

> "Regarding the fourth exception, Du Quenoy points to various difficulties of litigating in Lebanon that he claims will effectively deprive him of his day in court. This argument is similarly unavailing. Du Quenoy's complaints about the time, expense, and difficulty associated with litigating in Lebanon are nothing more than 'the obvious concomitants of litigation abroad.' Du Quenoy's allegations concerning corruption within the Lebanese judiciary also fail. '[B]are denunciations and sweeping generalizations' of corruption, rather than particularized allegations of targeted bias, 'do not permit us to pass value judgments on the adequacy of justice and the integrity of [Lebanon's] judicial system.' Likewise, Du Quenoy has not shown that political unrest in Lebanon would defeat the Lebanese judiciary's ability to adjudicate his claims."

(*id*. [internal citations omitted]; *accord Daou*, Civ. No. 1:20-cv-04438, at 12 ["While the plaintiffs' allegations regarding the instability of the Lebanese government and the mistreatment of a U.S. plaintiff in Lebanon are of course concerning, the plaintiffs have not presented facts indicating that they, specifically, would be victimized or unable to secure a fair hearing if required to litigate their claims against Lebanese financial institutions in Lebanon"]).

Accordingly, because plaintiff has failed to demonstrate that enforcement would deprive him of his day in court, he has failed to carry the "heavy burden" required to overcome the presumptive enforceability of the BankMed forum-selection clause.

Bank Audi

Plaintiff also acknowledges that he entered a contractual "bank relationship with Bank Audi" in "mid-2018" (*see* complaint, ¶ 70). When plaintiff engaged with Bank Audi, he signed Bank Audi's "General Agreement For Opening And Activating Accounts And General Terms And Conditions For Electronic Banking Services" (the Bank Audi GTC).

The relevant section pertaining to choice of law and forum selection is Chapter 6, Section 10. However, each party submits a different translation from Arabic to English of this section. In defendants' translation (NYSCEF Doc No. 27), this section provides that "Beirut courts ***shall*** have jurisdiction over any dispute that may arise over this Agreement and its annexes or over the accounts of the Client or other account holders, and all matters related to or resulting from accounts" (emphasis added). However, in plaintiff's translation, the forum clause is permissive, rather than exclusive, simply stating that the courts of Lebanon have jurisdiction, without depriving courts in other forums from exerting jurisdiction (*see* Feghali affirmation, ¶ 56). Under New York law, where a forum selection clause is permissive, it does not preclude litigation in the selected forum (*see Dietz v Linde Gas N. Am., LLC*, 178 AD3d 469, 470 [1st Dept 2019]).

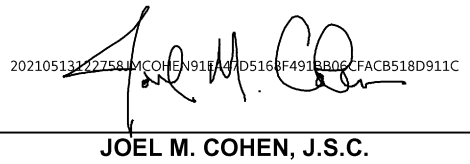
Because both parties provide different translations, this court cannot determine on the existing record whether the Bank Audi forum selection clause is permissive or mandatory. In any event, the issue is moot, as the complaint is being dismissed as against Bank Audi on independent grounds of lack of personal jurisdiction and forum non conveniens.

In view of the foregoing, it is unnecessary to reach defendants' other arguments in support of dismissal.

Accordingly, it is

ORDERED that defendants' motion to dismiss the complaint is **granted**, and the complaint is dismissed; and it is further

ORDERED that the clerk is directed to enter judgment accordingly.



5/13/2021
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE