

Pandis v Model Quality Introductions, Inc.
2020 NY Slip Op 33483(U)
October 13, 2020
Supreme Court, Kings County
Docket Number: 518900/2019
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 13th day of OCTOBER, 2020

P R E S E N T:

HON. RICHARD VELASQUEZ, Justice.

-----X
HARITINI PANDIS,

Plaintiff,

-against-

Index No.: 518900/2019
Decision and Order

MODEL QUALITY INTRODUCTIONS, INC.,

Defendant,
-----X

The following papers NYSCEF Doc #'s 3 to 14 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed _____	3-7
Opposing Affidavits (Affirmations) _____	11-13
Reply Affidavits/Memoradum(s) _____	14
Memorandum(s) of Law _____	4, 14

After having heard Oral Argument on AUGUST 12, 2020 and upon review of the foregoing submissions herein the court finds as follows:

Defendant MODEL QUALITY INTRODUCTIONS, INC., moves for an order dismissing this action as against MODEL QUALITY INTRODUCTIONS, INC. pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction or alternatively, pursuant to CPLR 327(a). (MS#1). Plaintiff opposes the same.

BACKGROUND/FACTS

Plaintiff alleges in her complaint defendant MODEL QUALITY INTRODUCTIONS, INC. is a matchmaking company. The complaint also alleges upon information and belief that the defendant is a California Company registered to do business in New York and maintained an office at 250 Park Avenue, Suite 700, New York, New York 10167. Plaintiff alleges that defendant misappropriated her professional portrait, and used it to promote defendants services for four months without her knowledge or authorization. As a result plaintiff alleges her professional reputation has been damaged and she has suffered severe emotional distress as a result of the MQI's alleged misuse of her professional portrait.

ARGUMENTS

Defendant MODEL QUALITY INTRODUCTIONS, INC., contends the Court lacks personal jurisdiction over them because they were not properly served. The defendant also contends, in the alternative, even if the Court has such jurisdiction, this case should be dismissed based on the doctrine of forum non-conveniens.

Plaintiff contends the defendant is an authorized foreign corporation and they properly served the defendant by serving the secretary of state pursuant to Business Corporations Law section 304, as evidenced by the affidavit of service which is considered prima facie evidence of proper service and defendants motion must be denied.

ANALYSIS

Pursuant to NY Business Corporations Law Section 304; "(a) The secretary of state shall be the agent of every domestic corporation and every authorized foreign corporation upon whom process against the corporation may be served. NY Bus Corp

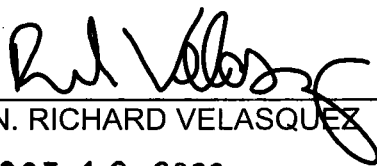
Law 304 (McKinney). Pursuant to NY Business Corporations Law Section 306(b)(1); "Service of process on the secretary of state as agent of a domestic or authorized foreign corporation shall be made by personally delivering to and leaving with the secretary of state or a deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany **The secretary of state shall promptly send one of such copies by certified mail, return receipt requested, to such corporation, at the post office address, on file in the department of state, specified for the purpose.** N.Y. Bus. Corp. Law § 306 (McKinney).

It is undisputed the defendant is a foreign corporation that is authorized to do business in New York. See defendants Exhibit B NYSEF Doc No.7. The process server affidavit submitted by the plaintiff establishes prima facie that the defendant was served. However, Defendant alleges in a sworn affidavit the secretary of state failed to forward the complaint to the foreign corporation authorized to do business within New York as prescribed by the NY Bus Corp Law 306(b)(1). Defendants in support of their allegation contend the complaint was not forwarded to them by the secretary of state and submits an affidavit explaining how they became aware of the action. This affidavit raises an issue regarding whether the secretary of state forwarded the complaint to the defendant pursuant to CPLR 306(b)(1). Although, "process server's affidavit of service constitutes prima facie evidence of proper service on a corporation pursuant to CPLR 311 (a) (1)" (see *Indymac Fed. Bank FSB v Quattrochi*, 99 AD3d 763, 764 [2012]; *C&H Import & Export, Inc. v MNA Global, Inc.*, 79 AD3d 784, 784 [2010]; *McIntyre v Emanuel Church of God In Christ, Inc.*, 37 AD3d 562, 562 [2007]). It is also well settled, where,

as here, "there is a sworn denial of service by the defendant, the affidavit of service is rebutted and the plaintiff must establish jurisdiction by a preponderance of the evidence at a hearing" (*Skyline Agency v Coppotelli, Inc.*, 117 AD2d 135, 139 [1986]; see *Indymac Fed. Bank FSB v Quattrochi*, 99 AD3d at 764; *Verille v Kopic*, 304 AD2d 823, 823 [2003]); quoting, *Rosario v. NES Med. Servs. of New York, P.C.*, 105 AD3d 831, 833, 963 NYS2d 295 (2013). Until personal jurisdiction is established the court is unable to make a determination as to defendants alternative requests for relief. Accordingly, this matter is hereby referred to a JHO to hear and determine whether the defendant was properly served in this matter. (MS#1).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York
OCTOBER 13, 2020



HON. RICHARD VELASQUEZ
OCT 13 2020

KINGS COUNTY CLERK
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