

**Reeves v Pesaru**

2021 NY Slip Op 30641(U)

March 8, 2021

City Court of the City of Rye, Westchester County

Docket Number: SC 20-76

Judge: Joseph L. Latwin

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This opinion is uncorrected and not selected for official publication.

CITY COURT : CITY OF RYE  
WESTCHESTER COUNTY

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CHRISTOPHER J. REEVES,

SC 20-76

*Plaintiff,*

*-against-*

NICOLE PESARU,

DECISION AND ORDER

*Defendant.*

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Appearances:

Plaintiff *Pro Se*

Defendant *Pro Se*

This is a small claims action. Plaintiff filed his claim seeking return of a security deposit. Plaintiff asserts that defendant resided and owned property in Westchester County. Defendant claims she has lived in Georgia for the last five years and recently sold the property she owned in Westchester County.

The Court held a virtual conference with the parties on January 25, 2021 and raised the issue of how this Court could exercise small claims jurisdiction over a defendant who did not reside in Westchester. The Court invited the parties to submit any authority relevant to the issue of jurisdiction.

Subject matter jurisdiction is the competence of the court to adjudicate a certain kind of case. City Courts are constitutional courts. New York Constitution article VI, § 17. The New York Constitution grants City Courts subject matter jurisdiction as “prescribed the legislature but not in any respect greater than the jurisdiction of the district court . . .” New York Constitution article VI, § 17(a). Under New York Constitution article VI, § 16, district courts have jurisdiction not greater than the courts for the city of New York.

In 1964, pursuant to article VI, § 17(b) of the New York State Constitution, the Legislature adopted the Uniform City Court Act (“UCCA”) to

regulate the City Courts, and establish uniform jurisdiction, practice, and procedure. Laws of 1964, ch 497. Among the provisions of the UCCA in which the Legislature granted City Courts jurisdiction is UCCA article 18 (small claims). *See, Noel F. Caraccio, PLLC v. Thomas*, 29 Misc3d 1230(A), 920 NYS2d 242 [Rye City Ct 2010], & *Payne v Genato*, 29 Misc3d 1229(A), 920 NYS2d 243 (Table) ][Rye City Ct 2010].

Here, neither party resided nor has any nexus to the City of Rye. Therefore, were this action brought as a plenary action under UCCA § 202, the Court would lack jurisdiction.

Actions involving real property under UCCA § 203(a) include what is commonly referred to as landlord-tenant proceedings; those proceeding brought to recover possession and for rent under RPAPL article 7-A. In actions involving real property under UCCA § 203(a), City Courts have jurisdiction “provided that the real property involved is located in whole or in part within the city.” The property leased by plaintiff from defendant was not in Rye. Thus, if this action was based upon UCCA § 203 (a), the Court would lack jurisdiction.

Uniform City Court Act 1801 says,

*The term "small claim" or "small claims" as used in this act shall mean and include any cause of action for money only not in excess of five thousand dollars exclusive of interest and costs, . . . provided that the defendant either resides, or has an office for the transaction of business or a regular employment, within the county.*

Unlike other jurisdictional bases, the only requirements are that the jurisdictional amount not be exceeded and the defendant resides or has an office in the county. Here, defendant resides in Georgia, not in Westchester County -- the county in which the Rye City Court sits.

Even if the City Court had subject matter jurisdiction of this type of case, the Court has no power to issue process to the defendant. Uniform City Court Act 1803(a) says,

*Small claims . . . procedure shall provide for the sending of notice of such claim by ordinary first class mail . . . to the party complained against at his residence, if he resides within the county, and his residence is known to the*

*claimant, or at his office or place of regular employment within the county if he does not reside therein or his residence within the county is not known to the claimant. . . .*

There is no indication that defendant resides or has an office for the transaction of business or a regular place of employment in Westchester County. Accordingly, there cannot be a small claim action against her here and there is no way for the Court to properly serve defendant in a small claims action here.

Accordingly, this Court lacks small claims jurisdiction over the defendant.<sup>1</sup>

The plaintiff claims this Court has jurisdiction over the defendant under CPLR 302(a). However, UCCA's limitations on small claims jurisdiction prevent the City Court from exercising small claims jurisdiction.

Instructive is *Wessell v. Porter*, 107 Misc2d 938, 438 NYS2d 57 [Buffalo City Court 1981]. Wessel was injured when a porch at defendants' property located in Buffalo. Liability of the defendants was based upon the allegation of ownership of the Buffalo property on the date when the injuries were sustained. Service of the small claims notice of claim was made by certified mail, return receipt requested, addressed to the Buffalo addresses of the property and an alleged office. Defendant said that she was not at the time of the service of this summons, nor had she been for more than a year, a resident of the County of Erie, but rather was a resident and domiciliary of California; that she was not employed in the County of Erie, nor did she have an office for the transaction of business therein. The Buffalo City Court found

*The term "office for the transaction of business" must be given its ordinary meaning (Coward v Moore, 3 Misc2d 666).*

*There was no evidence . . . [defendant] had an office for the transaction of business in the [Buffalo address]. No evidence was presented to indicate that there was an office telephone listed as to [defendant] at that address, no letterheads were shown listing . . . as an office address, nor were records presented to substantiate the assertion that [co-defendant] was an agent or employee of the*

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<sup>1</sup> If this Court had jurisdiction under the existing statutes, there would be no need for the Legislature to introduce bills seeking to grant jurisdiction over landlord tenant cases where the landlord was out of the county. See 2021 S.69 (*Hoyleman*) and A.297 (*Gottfried*).

*defendant. . . .*

*Obviously a proper judgment could have been obtained in a superior court pursuant to CPLR 302 if defendant were transacting business within the State and particularly since CPLR 302 (subd [a], par 4) specifically provides for in personam jurisdiction over a nondomiciliary who owns, possesses or uses any property within the State.*

*The small claims notice was served upon the codefendant . . . at her home . . . which resulted in the judgment against her in the Small Claims Court.*

*The fact that the taxes were sent to a Buffalo address or that rent was paid to the codefendant . . . or that repairs were contracted by the defendant and her husband does not convert the . . . residence into an office for the transaction of business for a codefendant (Howard v Government Employees Ins. Co., 105 Misc2d 489).*

*Additionally, section 1803 of the UCCA provides that: "Such procedure shall provide for the sending of notice of such claim by registered or certified mail with return receipt requested to the party complained against at his residence, if he resides within the county, and his residence is known to the claimant, or at his office or place of regular employment within the county if he does not reside therein or his residence within the county is not known to the claimant". (UCCA, § 1803, subd [a].)*

*This notice was sent to [the address in] Buffalo, New York, which was neither the residence nor was it claimed to be the office or place of regular employment of the said defendant.*

*I therefore hold that Small Claims Court did not have jurisdiction of the nondomiciliary defendant . . . merely by virtue of her ownership of real property within the county. (See Fairbanks v 95 Pondfield Rd. Corp., 171 Misc 698.) Additionally, the notice was in any event improperly served.*

There may be other Courts that might have jurisdiction over this defendant in which defendant may be properly served; just not in Rye City Court. Plaintiff may choose to pursue his claim in another court that might have jurisdiction, perhaps a court in Georgia or in New York State Supreme Court. However, Rye City Court lacks small claims jurisdiction.

Accordingly, it is,

ORDERED and ADJUDGED that the defendant have judgment against the plaintiff dismissing the action.

March 8, 2021

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JOSEPH L. LATWIN  
Rye City Court Judge

ENTERED

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Clerk

### Appeals

--An appeal shall be taken by serving on the adverse party a notice of appeal and filing three copies of: (1) the Notice of Appeal with the order or judgment being appealed; (2) the Affidavit of Service; and (3) a Request for Appellate Term Action ("RATA") with the Rye City Court Clerk. The Notice of Appeal shall designate the party taking the appeal, the judgment or order or specific part of the judgment or order appealed from and the court to which the appeal is taken. CPLR § 5515.

--Pursuant to UCCA § 1701 "Appeals in civil causes shall be taken to" the appellate term of the supreme court, 9<sup>th</sup> Judicial District.

-- An appeal as of right from a judgment entered in a small claim or a commercial claim must be taken within thirty days of the following, whichever first occurs:

1. service by the court of a copy of the judgment appealed from upon the appellant.
2. service by a party of a copy of the judgment appealed from upon the appellant.
3. service by the appellant of a copy of the judgment appealed from upon a party. Where service as provided in paragraphs one through three of this subdivision is by mail, five days shall be added to the thirty-day period prescribed in this section. UCCA § 1703(b).

-- The party taking an appeal shall promptly arrange with the Clerk to engage a service to have the record transcribed. The cost of transcription shall be borne by the appellant.

-- Pursuant to the Rules of the Appellate Term (Part 732), the Record must be

perfected within 90 days of the filing of the Notice of Appeal with the Appellate Term.

Papers

Undated letter from Christopher Reeves received February 22, 2021: &  
Letter of defendant dated March 1, 2021.