

Waheed v Storage Mart LLC

2024 NY Slip Op 32917(U)

August 19, 2024

Supreme Court, New York County

Docket Number: Index No. 152550/2024

Judge: Louis L. Nock

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X	INDEX NO.	<u>152550/2024</u>
SEHRA WAHEED,		06/10/2024,
		06/17/2024,
Plaintiff,		06/24/2024,
		07/01/2024,
- v -		06/13/2024,
STORAGE MART LLC, SM I MMS LLC OPERATOR, d/b/a	MOTION DATE	<u>06/20/2024</u>
MANHATTAN MINI STORAGE LLC, NICKOLAOS		
RETOULIS, NIKI DASKALOPOULOS, and IRINI'S		001 002 003
ORIGINALS LLC,	MOTION SEQ. NO.	<u>004 005 006</u>

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 53, and 54 were read on this motion by plaintiff for WAIVER OF FEES.

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 69, 70, 83, and 84 were read on this motion by plaintiff for A DEFAULT JUDGMENT against defendants Rentoulis, Daskalopoulos, and Irini's Originals LLC.

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 82, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115

were read on this motion by plaintiff to AMEND CAPTION (and Cross-Motion on behalf of defendants named as Storage Mart LLC, SM I MMS, LLC Operator, d/b/a Manhattan Mini Storage LLC).

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 116, 117, 139, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, and 167

were read on this motion by plaintiff for REPLEVIN as against defendants Rentoulis, Daskalopoulos, and Irini's Originals LLC.

The following e-filed documents, listed by NYSCEF document numbers (Motion 005) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 80, 81, 85, 99, 124, 125, and 126

were read on this motion by defendants Rentoulis, Daskalopoulos, and Irini's Originals LLC, to DISMISS THE COMPLAINT.

The following e-filed documents, listed by NYSCEF document numbers (Motion 006) 71, 72, 73, 74, 75, 76, 77, 78, 79, 123, 127, and 129

were read on this motion on behalf of defendants named as Storage Mart LLC, SM I DISMISS THE COMPLAINT and/or COMPEL ARBITRATION.

MMS, LLC Operator, d/b/a Manhattan Mini Storage LLC, to

LOUIS L. NOCK, J.

Plaintiff *Pro Se* commenced this action by summons and complaint filed March 21, 2024.

The allegations of the complaint, as can be discerned by the court, are summarized as follows:

For roughly a dozen years, plaintiff had been renting two storage units from “Manhattan Mini Storage,” which is, in the conglomerate, identified in the caption as defendants Storage Mart LLC, SM I MMS LLC Operator, d/b/a Manhattan Mini Storage LLC (collectively, the “Storage Facility Defendants”), in which she kept property valued at \$250,000. Rent payments during that period were paid directly to the storage facility on her behalf by the New York City Human Resources Administration (“HRA”). Rent payments, pursuant to plaintiff’s lease agreement with the storage facility, were due on the 10th of the month. However, for reasons not detailed in the complaint, HRA ceased making the payments as of January 10, 2024.

By virtue of the cessation in rent payments, the Storage Facility Defendants scheduled an auction of plaintiff’s stored property for February 28, 2024. It is alleged that, despite plaintiff’s willingness and ability to bring the account up to date “just [a] few minutes before [the] auction purchaser’s arrival to claim her property” (Complaint ¶ 27), the Storage Facility Defendants allowed the auction purchase to consummate. The auction purchasers are defendant Nickolaos Rentoulis; his wife, defendant Niki Daskalopoulos (whose actual name is Androniki Daskalopoulos [*see*, NYSCEF Doc. No. 59]); and defendant Irini’s Originals LLC, a company owned by defendant Daskalopoulos (collectively, the “Auction Purchaser Defendants”). Defendant Rentoulis has submitted an affidavit in the context of motion practice with which this decision is concerned, to be discussed below, attesting that the Auction Purchaser Defendants are all Delaware domiciliaries, and that their auction purchase took place remotely from Delaware,

via an InterNet-based bidding process hosted by an Arizona limited liability company (*see*, NYSCEF Doc. No. 58; *see also*, NYSCEF Doc. No. 60).

From what the court can discern from its reading of the *pro se* complaint and interlocutory filings in the motion practice to be discussed below, plaintiff seeks a money judgment against all defendants for the loss of her property, and incidental damages, as well as an order of replevin directing the Auction Purchaser Defendants to return the property.

Motion Seq. No. 001

Plaintiff moved by order to show cause for a waiver of filing fees in this action on account of financial inability (NYSCEF Doc. No. 53). The court has already granted such authorization (*id.*) and will reiterate same in the decretal paragraphs of this decision and order.

Motion Seq. No. 002

Plaintiff moves for a default judgment against the Auction Purchaser Defendants on the force of a self-devised affidavit of service attesting to the fact she herself “delivered” the summons and complaint on the Auction Purchaser Defendants via email to defendant Irini’s Originals LLC; via “Mail” (undescribed); via Federal Express; and via delivery to the “Sheriff” (undescribed), on March 27, 2024 (NYSCEF Doc. No. 4). Per CPLR 313, service of process on out-of-state defendants must satisfy New York’s service of process protocols. Service via email is not an authorized method of service of process; nor is service via a private delivery courier such as Federal Express (*see*, CPLR art 3). Moreover, plaintiff – as a party in the action – lacks the capacity to effect service of process (CPLR 2103[a]). As for the attestation about delivery to the “Sheriff,” that, too, finds no basis in CPLR Article 3’s dictates for service of process. While it is true that, under CPLR 313, “any person authorized to make service by the laws of the

state . . . in which service is made,” is competent to effect the service, no showing is made to demonstrate the out-of-state sheriff as possessing such authorization; but also, no evidence exists in the service record to the effect that whatever was delivered to that sheriff was, thereafter, transmitted to the Auction Purchaser Defendants at all, let alone via any method of service of process recognized by New York law.

Thus, this court does not possess personal jurisdiction over the Auction Purchaser Defendants for the lack of proper service of process.

But distinct of the lack of proper service of process: the Auction Purchaser Defendants, who, as Delaware domiciliaries, merely participated in an online InterNet auction, run by an Arizona auction house (non-party “Storage Treasures, LLC”) without any interaction with New York or with any of the other parties in New York (*see*, NYSCEF Doc. Nos. 58-60), cannot be said to even be amenable to personal jurisdiction in New York (*see*, *Sichkin v Leger*, 2012 WL 3150583 [ED NY 2012] [out-of-state defendant who purchased items from a New York resident through an eBay auction was not subject to New York’s Long-Arm Statute, CPLR § 302[a][1]; *Skrodzki v Marcello*, 810 F Supp 2d 501, 517 [ED NY 2011] [“Indeed, a majority of courts are unwilling to assert jurisdiction over disputes arising from purchases on auction websites even when the item is delivered into the plaintiff’s home state”]; *Jones v Munroe*, 2 Misc 3d 24 [Sup Ct, App Term, 1st Dept 2003] [holding that, under New York City Civil Court Act section 404, which is analogous to CPLR 302, an isolated sales transaction through an online auction house was insufficient to confer personal jurisdiction over an out-of-state resident, particularly where delivery of the goods took place out-of-state]; *Sayeedi v Walser*, 15 Misc 3d 621, 628 [Civ Ct, Richmond County, 2007] [holding that under New York City Civil Court Act section 404 an out-of-state resident was not subject to New York jurisdiction based on a single sale of goods

shipped to New York via an InterNet auction site because defendant did not purposefully invoke the benefits and protections of New York law)).

Defendant Rentoulis attests that none of the Auction Purchaser Defendants conducts any business in New York or owns property in New York (*see*, NYSCEF Doc. No. 58 ¶ 11; *see also, id.* ¶¶ 9-16) and, therefore, none of them are amenable to any of the remaining factors for Long-Arm jurisdiction under CPLR 302, distinct of the jurisdictional insignificance of their remote online auction bidding discussed above (*see also*, NYSCEF Doc. No. 59 [Daskalopoulos Affidavit]). Whether we examine this aspect of the case from a lack of service standpoint or a lack of amenability to jurisdiction standpoint, one thing is clear – a default judgment against the Auction Purchaser Defendants cannot be obtained (*see, Yu v Ma*, 145 AD3d 577 [1st Dept 2016]). This is especially so in light of those defendants’ vigorous participation in this action as demonstrated by their opposition to this motion (seq. no. 002), their opposition to motion sequence no 004, and their motion to dismiss for lack of jurisdiction (seq. no. 005), as well as their counsel’s appearance at oral argument on July 25, 2024 (*see also, Scott v Allstate Ins. Co.*, 124 AD2d 481 [1st Dept 1986] [this state’s policy to determine actions on the merits instead of by default]).

Motion Seq. No. 003

Plaintiff moves to amend the complaint to correct the naming of the defendants insofar as Daskalopoulos and the Storage Facility Defendants are concerned, to read “Androniki Rentoulis personally and as a sole member of Irini’s Originals, LLC, and Burnam Smartco LLC.” The Storage Facility Defendants cross-move to amend their naming in the caption by noting that “Storage Mart” is but a trade name owned by a “Burnam Smartco LLC” and that “Manhattan Mini Storage” is but a trademark owned by named defendant “SM I MMS, LLC.”

First, as to Daskalopoulos: as discussed hereinabove, insufficient evidence exists to conclude that she, or the other Auction Purchaser Defendants, are subject to the personal jurisdiction of this court, either for lack of service of process grounds or lack of amenability to jurisdiction grounds. As further discussed hereinafter, CPLR 302's Long-Arm provisions relating to transactional causes of action ("transacts any business within the state or contracts anywhere to supply goods or services in the state," CPLR 302[a][1]) require such transaction or contract to be the subject of the New York action (*see*, Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C302:8 at 182, CPLR C302:9 at 186 [2010 ed]). But as noted above, participation in an online auction from Delaware, enabled by an online bidding platform hosted by an Arizona limited liability company, does not suffice to give rise to New York jurisdiction.

To be sure, barring any statute of limitations issues, plaintiff retains the right to sue the Auction Purchaser Defendants in Delaware; but not in New York. As a result, the motion by the Auction Purchaser Defendants to dismiss the claims against them here, both on lack of service grounds and lack of amenability to jurisdiction grounds (motion seq. no. 005), must be granted and, thus, plaintiff's instant motion to correct Daskalopoulos' name in the caption hereof is a moot matter.

As for plaintiff's motion to correct the name of the Storage Facility Defendants in the caption hereof to add Burnam Smartco LLC, and the Storage Facility Defendants' cross-motion to recognize such correction: the motion and cross-motion are granted such that the Storage Facility Defendants shall be identified only as Smartco LLC and SM I MMS, L.L.C., d/b/a Manhattan Mini Storage. However, the viability of any of the claims against said defendants

depends on the outcome of said defendants' motion to dismiss on arbitrability grounds (seq. no. 006).

Motion Seq. No. 004

Plaintiff has moved for an order styled as "A Writ of Replevin," to compel the Auction Purchaser Defendants to return the auctioned property to her. But as discussed above, and hereafter, this court's lack of personal jurisdiction over the Auction Purchaser Defendants in this case precludes any such order by this court.

Motion Seq. No. 005

The Auction Purchaser Defendants move to dismiss the claims against them on the grounds of lack of personal jurisdiction discussed, and concurred with, above. Accordingly, the motion is granted without prejudice to plaintiff's right to pursue claims against the Auction Purchaser Defendants in Delaware unless precluded by any applicable statute of limitations.

Motion Seq. No. 006

The Storage Facility Defendants move to dismiss the claims against them on the basis of an arbitration clause found in their lease agreements with plaintiff. The lease agreements for the two subject storage units, between defendant SM I MMS, L.L.C., and plaintiff (NYSCEF Doc. Nos. 74, 75), both contain identical arbitration provisions titled "MANDATORY BINDING ARBITRATION" requiring any and all claims arising out of the storage units (except for those brought in Smalls Claims Court) to be subject to binding arbitration before the American Arbitration Association (*id.*, § 36). Thus, pursuant to CPLR 3211(a)(5), the claims against the Storage Facility Defendants must be dismissed in favor of arbitration (*see also*, CPLR 7501,

7503, 7515), although this court can retain jurisdiction for the limited purpose of entertaining any applications for injunctive relief in aid of arbitration (CPLR 7502[c]).¹

ACCORDINGLY, it is

ORDERED that plaintiff's motion (seq. no. 001) for an order waiving filing fees in this action on account of financial inability is granted and, thus, any papers filed herein by plaintiff are exempt from payment of fees; and it is further

ORDERED that plaintiff's motion (seq. no. 002) for a default judgment against defendants Rentoulis, Daskalopoulos, and Irini's Originals, LLC, is denied; and it is further

ORDERED that plaintiff's motion to amend the caption, and the cross-motion by defendants named as Storage Mart LLC, SM I MMS, LLC Operator, d/b/a Manhattan Mini Storage LLC (seq. no. 003), are granted to the extent that Storage Mart LLC shall be excised from the caption, Burnam Smartco LLC shall be added to the caption, and the party named as SM I MMS, LLC Operator, d/b/a Manhattan Mini Storage LLC shall be referred to in the caption as SM I MMS, L.L.C., d/b/a Manhattan Mini Storage; and it is further

ORDERED that plaintiff's motion (seq. no. 004) for "A Writ of Replevin" is denied; and it is further

ORDERED that the motion (seq. no. 005) by defendants Rentoulis, Daskalopoulos, and Irini's Originals LLC to dismiss the claims against them in this action is granted and, therefore, said claims are dismissed without prejudice to plaintiff's right to assert such claims against said defendants in the State of Delaware, subject to application of any statute of limitations; and, accordingly, it is

¹ The Storage Facility Defendants' cross-motion in motion sequence no. 003 is, in part, redundant of the dismissal relief sought by them in motion sequence no. 006 and is disposed of accordingly via the within grant of motion seq. no. 006.

ORDERED that the caption of this action shall read:

“-----X
 SEHRA WAHEED, :
 :
 Plaintiff, :
 :
 -against- :
 :
 BURNAM SMARTCO LLC and :
 SM I MMS, L.L.C., d/b/a MANHATTAN :
 MINI STORAGE, :
 :
 Defendants. :
 -----X”; and it is further

ORDERED that the motion (seq. no. 006) by defendants Burnham Smartco LLC and SM I MMS, L.L.C., d/b/a Manhattan Mini Storage, to dismiss the claims against them in this action in favor of arbitration is granted and, therefore, said claims are dismissed without prejudice to the parties’ rights to apply to this court for any injunctive relief in aid of arbitration.

This will constitute the decision and order of the court.

ENTER:



<u>8/19/2024</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/> OTHER
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	<input type="checkbox"/> REFERENCE