

**Seren Fashion Art & Interiors, LLC v Henriques**

2024 NY Slip Op 33999(U)

November 8, 2024

Supreme Court, New York County

Docket Number: Index No. 150237/2024

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*

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THE SEREN FASHION ART AND INTERIORS, LLC, and  
SEHRA WAHEED,

Plaintiffs,

- v -

PROPERTY MANAGER JOHN HENRIQUES, SECURITY  
DIRECTOR PATRICK McKELL, TRUMP WORLD TOWER  
CONDOMINIUM, 845 UN LIMITED PARTNERSHIP,  
TRUMP CORPORATION, BOARD OF MANAGERS OF  
THE TRUMP WORLD TOWER CONDOMINIUM, and ERIC  
TRUMP,

Defendants.

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**INDEX NO.** 150237/2024

**MOTION DATE** 05/02/2024,  
N/A

**MOTION SEQ. NO.** 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 7, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 37, 38, and 41

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 46, 47, 48, 50, and 51

were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, it is ordered that defendants’ motion to dismiss the complaint (Mot. Seq. 001) is granted, for the reasons set forth in the motion papers (NYSCEF Doc. Nos. 8, 12, 32) and the exhibits attached thereto, in which the court concurs, as summarized herein. Accordingly, plaintiff’s motion for summary judgment, brought by order to show cause (Mot. Seq. 002), is denied as moot.

## Background

Plaintiff<sup>1</sup> *Pro Se* Sehra Waheed commenced this action by summons and complaint filed January 9, 2024, asserting causes of action based on breach of fiduciary duty, aiding and abetting breach of fiduciary duty and by-laws, negligence, and intentional infliction of emotional distress (NYSCEF Doc. No. 1 at 15). Plaintiff alleges damages sustained arising out of her eviction, on December 7, 2023, from her rental apartment in a condominium owned by defendant Trump World Tower Condominium, located at 845 United Nations Plaza, New York, NY 10017.

An affidavit of service by one, “Sarah S.”<sup>2</sup> attests to service by “US Postal Service and Email” on January 11, 2024, to all defendants at 845 United Nations Plaza Management, New York, NY 10017, as well as to an attorney, Robert T. Holland, at 60 East 42<sup>nd</sup> Street, 16<sup>th</sup> Floor, New York, NY 10165 (NYSCEF Doc. No. 2). A second affidavit of service by Jelena Joannou attests to service on January 31, 2024, by personal delivery to security personnel at the front desk at 725 Fifth Avenue, New York, NY 10022 (NYSCEF Doc. No. 3).

Defendants move to dismiss the complaint pursuant to CPLR 3211(a)(8), on the basis that this court lacks personal jurisdiction in this matter due to improper service upon defendants, and CPLR § 3211(a)(7) for failure to state a claim. The motion is opposed.

## Standard of Review

CPLR 308 governs personal service upon natural persons. To begin, service via email is not an authorized method of service of process (*see*, CPLR art 3). Additionally, CPLR 308(2) provides that substitute service on an individual may be had by delivery of the summons to “a person of suitable age and discretion at the actual place of business, dwelling place or usual place

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<sup>1</sup> The court notes, and Ms. Waheed admits (NYSCEF Doc. No. 38), that plaintiff The Seren Fashion Art and Interiors, LLC, is unrepresented by counsel, as is required under CPLR 321(a) (*see, e.g., Michael Reilly Design, Inc. v Houraney*, 40 A.D.3d 592 [2d Dept 2007]).

<sup>2</sup> The purported affidavit does not identify the full name of the affiant, rendering its notarization of dubious nature.

of abode of the person to be served and by ... mailing the summons to the person to be served at his or her last known residence or ... at his or her actual place of business” (CPLR 308 [2]). An affidavit of service is “prima facie evidence that defendant was properly served with the summons and complaint pursuant to CPLR 308(2)” (*Caba v Rai*, 63 AD3d 578, 582-83 [1st Dept 2009]). “However, when a defendant submits a sworn denial of receipt of service containing specific facts to refute the statements in the affidavit of the process server, the prima facie showing is rebutted and the plaintiff must establish personal jurisdiction by a preponderance of the evidence at a hearing” (*Citibank, N.A. v Balsamo*, 144 A.D.3d 964, 964 [2d Dept 2016]).

The Appellate Division, First Department, has held that service upon a building’s doorman or security guard falls within the contemplation of CPLR 308(2) alternative service (*see Charnin v Cogan*, 250 AD2d 513 [1st Dept 1998]; *Costine v St. Vincent’s Hosp. & Med. Ctr. of New York*, 173 A.D.2d 422 [1st Dept 1991]). However, such service is only effective where the process server was prevented from proceeding further into the building to the defendant’s actual residence (*Bank of America, N.A. v Grufferman*, 117 AD3d 508, 508-509 [1st Dept 2014]).

A corporation, such as defendant Trump Corporation, may be served by delivery in hand to “an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service” (CPLR 311 [a] [1]), by service upon the New York Secretary of State (Business Corporations Law §§ 306, 307), or by first class mail with acknowledgement of receipt (CPLR 312-a). Substituted service, as allowed on a natural person pursuant to CPLR 308 (2) and (4), is not available to obtain jurisdiction over a corporation (*Faravelli v Bankers Tr. Co.*, 85 AD2d 335, 339-40 [1st Dept 1982], *affd* 59 NY2d 615 [1983]).

A limited partnership, such as defendant 845 UN Limited Partnership, may be served by delivery in hand to a “managing or general agent or general partner of the limited partnership in this state, to any other agent or employee of the limited partnership authorized by appointment to receive service or to any other person designated by the limited partnership to receive process” (CPLR 310-a) or by service upon the New York Secretary of State (N.Y. Partnership Law §§ 121-109 and 121-1505).

An unincorporated association, such as the Trump World Tower Condominium (*see* NYSCEF Doc. No. 12 at 6), may be served via the president or treasurer of the association in his or her representative capacity (CPLR 1025; General Associations Law § 13) or all the members of the association (General Associations Law § 17) (*see Merkos L'Inyonei Chinuch v Congregation Lubavitch, Inc.*, 82 Misc 3d 29, 32 [App Term, 2d, 11th, and 13th Dist 2024]; *Makhnevich v Board of Mgrs. of 2900 Ocean Condominium*, 72 Misc 3d 1208(A) [Sup Ct 2021], *affd* 217 AD3d 630 [1st Dept 2023]).

A natural person, corporation, or partnership may also be served via a person designated as “an agent for service in a writing” (CPLR 318). However, “[a]n attorney is not automatically considered the agent of his [or her] client for the purposes of the service of process and, absent proof that a defendant has designated his or her attorney as an agent for the acceptance of process, an attorney lacks the authority to accept service on the defendant's behalf” (*Born To Build, LLC v Saleh*, 139 A.D.3d 654, 655 [2d Dept 2016] [internal quotation marks and citations omitted]).

### Discussion

Here, plaintiff failed to properly serve defendants pursuant to any of the methods of service recognized at law. An affidavit by defendant John Henriques, executive manager of

Trump World Tower Condominium, attests that he was not served at either his home or place of business and denies ever receiving a copy of the summons and complaint by mail at Trump World Tower Condominium (affidavit, NYSCEF Doc. No. 10 ¶¶ 5, 8).

In opposition, plaintiff concedes that the attempted mail by “U.S. Postal Service was misplaced and not delivered” to Trump World Tower Condominium (affidavit, NYSCEF Doc. No. 15 at 4). Plaintiff, therefore, proceeded to attempt personal service, purportedly upon all defendants, by substitute service upon the security personnel at 725 Fifth Avenue, New York, NY 10022 (*id.*).

However, plaintiff’s process server<sup>3</sup> does not attest that she was denied access by security to the building, or indeed even asked for such access (*Grufferman*, 117 AD3d 508 [1st Dept 2014]). The affidavit of service upon the security personnel also does not indicate that any follow-up mailing to defendants occurred (NYSCEF Doc. No. 3). Substitute service on defendants is, thus, facially defective.

To the extent plaintiff attempts service on Trump World Tower Condominium’s outside counsel, Robert Holland, defendants deny that Mr. Holland is the registered agent for service of process or the business agent of Trump World Tower Condominium. Indeed, plaintiff offers no proof that any of the defendants have designated Mr. Holland as his or its agent for receiving service of process, and plaintiff’s process server does not address whether she knew him to be authorized as such (NYSCEF Doc. No. 2). Therefore, service upon Mr. Holland as a designated agent for defendants is also defective.

Insofar as plaintiff relies on substituted service on any of the individual defendants as officers of the entity defendants, such service is not sufficient to obtain jurisdiction over a

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<sup>3</sup> Who, as noted above (note 2, *supra*), remains substantially anonymous for all intents and purposes.

corporation (*Lakeside Concrete Corp. v Pine Hollow Bldg. Corp.*, 104 AD2d 551, 552 [2d Dept 1984], *affd* 65 NY2d 865 [1985] [“Since the process in the instant case was not personally delivered to Mr. Muchnick, a corporate officer, nor any other authorized person, service was not effectively made upon the defendant corporations”). According to Mr. Henriques, defendants Trump Corporation, 845 UN Limited Partnership, and Trump World Tower Condominium each have a registered agent for service of process (*id.* ¶ 9-11), and no proof of service upon such registered agents has been submitted.

Thus, this court does not possess personal jurisdiction over any of the defendants, due to lack of proper service of process. “Petitioner’s status as a pro se litigant does not excuse the defective service, and the fact that respondents received actual notice does not confer jurisdiction upon the court” (*Jiggetts v MTA Metro-N. R.R.*, 121 A.D.3d 414, 415 [1st Dept 2014] [citations omitted]). Defendants are, thus, entitled to dismissal of the complaint on jurisdictional grounds alone. The court need not address defendants’ argument to dismiss based on failure to state a claim. Nor does the court need to address plaintiffs’ motion for summary judgment in view of the foregoing disposition.

Accordingly, it is hereby

ORDERED that the motion to dismiss (Mot. Seq. No. 001) is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of all defendants dismissing the action against them; and it is further

ORDERED that the motion for summary judgment (Mot. Seq. No. 002) is denied as moot.

This constitutes the decision and order of the court.

ENTER:

*Louis L. Nock*

11/8/2024

DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE