



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

December 14, 2022

To:

Hon. Paul V. Malloy
Circuit Court Judge
Electronic Notice

Marylou Mueller
Clerk of Circuit Court
Ozaukee County
Electronic Notice

Oleg Feldman
Electronic Notice

Jeffrey W. Guettinger
Electronic Notice

Stacy Kay Shelly
Electronic Notice

Leonid Shteynbuk
11009 N. Elder Tree Ct.
Mequon, WI 53092

You are hereby notified that the Court has entered the following opinion and order:

2021AP190

Bank of the West v. Maria Melekh (L.C. #2019CV355)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Maria Melekh appeals from a circuit court order dismissing her third-party complaint with prejudice for lack of personal jurisdiction. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Bank of the West (the Bank) sued Melekh after she defaulted on a retail motor vehicle installment contract with Napleton's Auto Werks, Inc.² In her third-party complaint against Napleton's and two Wisconsin residents, Albert Golant and Leonid Shteynbuk, Melekh alleged that she was victimized by Golant and Shteynbuk. She alleged that Golant and Shteynbuk lured members of the Russian-speaking community "to act as the 'straw purchasers' of luxury vehicles from 'friendly' dealerships located in [Wisconsin and Illinois] and selling these vehicles at a substantial profit overseas, primarily China." Melekh alleged that Golant and Shteynbuk convinced her to help Shteynbuk purchase the subject vehicle from Napleton's. Golant and Shteynbuk forged Melekh's signature on the credit application for the vehicle and provided false information about her income and employment. Melekh participated in the delivery process for the vehicle, but Shteynbuk took possession of the vehicle. Golant and Shteynbuk also diverted delivery of loan account statements so that Melekh did not receive them. Melekh allegedly learned of the indebtedness when the bank sued her for the default.

On October 16, 2020, Napleton's moved to dismiss Melekh's third-party complaint for lack of personal jurisdiction. *See* WIS. STAT. § 802.06(2)(a)3. The motion alleged that Napleton's did not have the necessary minimum contacts with Wisconsin to establish personal jurisdiction. In a supporting affidavit, the general manager of Napleton's averred that Melekh executed the purchase contract and took delivery of the vehicle in Illinois, Napleton's is an Illinois corporation which is not licensed to do business in Wisconsin, and Napleton's has no real estate, employees, or other litigation in Wisconsin.

² Bank of the West is the assignee of Melekh's note with Napleton's.

Ozaukee County Circuit Court Local Rule 204.2 states that a party has twenty days from service of a motion to file a response and if no response is filed “it shall be presumed that [the responding party] has waived the right to do so.” *Ozaukee County Circuit Court Local Rules* (Sept. 14, 2020).³ In lieu of filing a response to Napleton’s motion to dismiss, on December 8, 2020, three days before the scheduled hearing on the motion,⁴ Melekh asked the circuit court to set a briefing schedule on the motion.

At the December 18, 2020 hearing on its motion to dismiss, Napleton’s asked the court to grant its motion because Melekh had not rebutted its showing that personal jurisdiction was lacking. Melekh again asked the court to set a briefing schedule. The court denied Melekh’s request and considered the motion to dismiss on the merits. The court concluded that there was no personal jurisdiction over Napleton’s and granted its motion to dismiss. Melekh appeals.

We first address Melekh’s argument that the manner in which the circuit court handled her motion to dismiss earlier in the case provided a reasonable basis to request a briefing schedule on Napleton’s motion to dismiss. Essentially, Melekh argues that she should not be held to the response requirements of Local Rule 204.2 because earlier in the case, her motion to dismiss proceeded to a hearing at which time the circuit court ordered further briefing. The record does not support Melekh’s argument. The circumstances of the two motions to dismiss are not the same.

³ We observe that Melekh does not argue that the circuit court erred when it denied her request for a briefing schedule.

⁴ The December 11, 2022 hearing on Napleton’s motion to dismiss was adjourned to December 18, 2020.

The record shows that in response to Melekh's December 4, 2019 motion to dismiss, the Bank filed a response on January 6, 2020, shortly before the motion hearing date. At the motion hearing (January 10, 2020), the circuit court ordered additional briefing on Melekh's motion. In contrast, Melekh did not file a response to the motion to dismiss for lack of personal jurisdiction over Napleton's before the December 18 hearing date. The record shows that at the time the court heard the motion to dismiss for lack of personal jurisdiction, Melekh had not filed a response to the motion.

We turn to Melekh's argument that the circuit court had to hold an evidentiary hearing to determine the facts relating to personal jurisdiction. We reject Melekh's reliance upon *Kavanaugh Restaurant Supply, Inc. v. M.C.M. Stainless Fabricating, Inc.*, 2006 WI App 236, 297 Wis. 2d 532, 724 N.W.2d 893. In *Kavanaugh*, the party defending the motion to dismiss opposed the motion and requested an evidentiary hearing. *Id.*, ¶¶4-5. Instead of holding an evidentiary hearing, the circuit court decided the motion based on the pleadings and concluded that there were no facts in dispute and that personal jurisdiction was lacking. *Id.*, ¶5.

Kavanaugh is distinguishable from the case before us and we do not read *Kavanaugh* to require an evidentiary hearing under the facts of Melekh's case. As stated above, Melekh failed to oppose the motion to dismiss for lack of personal jurisdiction as required by the local rules. Furthermore, she failed to request an evidentiary hearing at the December 18 motion hearing.⁵ Rather, at the December 18 hearing, Melekh requested a briefing schedule. The circuit court did not err when it decided the motion to dismiss based upon the information before it, which did not

⁵ We will not consider Melekh's arguments about the need for an evidentiary hearing because they are raised for the first time on appeal. *See Segall v. Hurwitz*, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983) (generally, we do not consider issues raised for the first time on appeal).

include any response from Melekh. In the absence of a response from Melekh, no facts were in dispute such that an evidentiary hearing was required to resolve the motion to dismiss.

Because the circuit court did not err when it granted the motion to dismiss for lack of personal jurisdiction over Napleton's, we do not address any other issues on appeal. *See Hussey v. Outagamie County*, 201 Wis. 2d 14, 17 n.3, 548 N.W.2d 848 (Ct. App. 1996) (“[i]f a decision on one point disposes of the appeal, we will not consider other issues raised”).⁶

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

⁶ We have considered all of the arguments in the briefs. To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).