

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

-----X

ELISA KWON de ALVAREZ,

Plaintiff,

Index No. _____

-against-

CHELSEA WINE & STORAGE, INC.,

SUMMONS

Defendant

-----X

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff’s attorneys, LAW OFFICE OF MARK E. GOIDELL, 666 Old Country Road, Suite 700, Garden City, New York 11530, within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue is CPLR § 503 because the Defendant resides in New York County and the venue of the acts and omissions set forth in the Complaint is New York County.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated: Garden City, New York
May 9, 2019

LAW OFFICE OF MARK E. GOIDELL

/s Mark E. Goidell

By: Mark E. Goidell, Esq.

Attorney for Plaintiff

666 Old Country Road, Suite 700

Garden City, New York 11530

Tel. (516) 683-0001

Fax. (516) 228-0383

mark@goidell.com

Defendant's Address:

Chelsea Wine & Storage, Inc.
410 West 16th Street
New York, New York 10011

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

-----X
ELISA KWON de ALVAREZ,

Plaintiff,

Index No.

-against-

CHELSEA WINE & STORAGE, INC.,

VERIFIED COMPLAINT

Defendant.
-----X

Plaintiff, by her attorneys, Law Office of Mark E. Goidell, as and for her Verified Complaint against the Defendant, states and alleges the following:

PRELIMINARY STATEMENT

1. This is an action seeking damages for Defendant’s violation of its obligations to safely store and secure Plaintiff’s wine collection by unilaterally disposing of Plaintiff’s wine collection in violation of New York State statutes, the Administrative Code of the City of New York, and Defendant’s common law obligations. As a result of Defendant’s wrongful conduct, Plaintiff is entitled to an award of compensatory and statutory damages, as well as her attorney’s fees and the expenses and costs of this litigation.

PARTIES

2. At all times relevant herein, Plaintiff ELISA KWON de ALVAREZ (hereinafter “Elisa” or “Plaintiff”) was and is a United States citizen currently residing in Spain, where she has been a resident since August 2010. Prior thereto, Plaintiff was at all relevant times a resident of the City and State of New York.

3. At all times relevant herein, Defendant CHELSEA WINE & STORAGE, INC.

(“CWS” or “Defendant”) was and is a domestic New York corporation duly organized and existing by virtue of and under the laws of the State of New York, with a principal place of business located in the County, City and State of New York.

4. Upon information and belief, CWS owns, operates, manages and controls a warehouse for the storage of wines located at 410 West 16th Street, New York, New York 10011 (the “CWS warehouse”).

FACTS

5. In or about 1997, while Plaintiff resided in the City and State of New York, Plaintiff began storing her wine collection at the CWS warehouse.

6. In or about March 2004, while Plaintiff still resided in the City and State of New York, CWS and Plaintiff individually entered into a written contract signed by both Plaintiff and CWS for the storage of Plaintiff’s wine collection at the CWS warehouse (the “2004 Contract”). A true and accurate copy of the 2004 Contract is annexed hereto as Exhibit A and made a part hereof.

7. Pursuant to the 2004 Contract, Plaintiff agreed to store approximately sixty-five (65) cases of wine at the CWS warehouse in exchange for payment set forth in a written document entitled “Storage Rates.” The monthly rate provided for in the Storage Rates was in the amount of Two Dollars Fifty Cents (\$2.50) per case.

8. CWS invoiced Plaintiff each month pursuant to the 2004 Contract for storage fees and Plaintiff paid the monthly storage fees by automatic deduction payments from her credit card account.

9. In 2010, Plaintiff moved to Spain but continued to store cases of wine at the CWS warehouse pursuant to the 2004 Contract.

10. In 2011, Plaintiff notified CWS of the change in her residential and mail address, and

also provided CWS a substitute credit card for monthly payments pursuant to the 2004 Contract.

11. Starting in 2012, CWS purported to increase the monthly rate, notifying Plaintiff in September 2012 of an increase in storage rates to Two Dollars Eighty Cents (\$2.80) per case beginning in October 2012. In 2016, CWS purported to increase the monthly storage charges, notifying Plaintiff in February 2016 that she was required to pay monthly storage fees of Three Dollars Fifty Cents (\$3.50) per case starting on March 1, 2016. In September 2016, CWS again purported to raise the monthly storage rates, notifying Plaintiff that she was required to pay “approximately Two Hundred Dollars (\$200.00) per month. In November 2016, CWS once again purported to increase the monthly storage rate of Five Dollars (\$5.00) per case.

12. The increases imposed by CWS for monthly storage charges violated the terms of the 2004 Contract, and in addition, violated the provisions of the New York State Truth in Storage Act, General Business Law §§ 607(1) and 607(3), and the Administrative Code of the City of New York § 20-478.

13. In September 2016, CWS notified Plaintiff that the increase in the monthly storage rate was attributable to the acquisition of an insurance policy that was intended to provide insurance coverage for the value of Plaintiff’s wines stored at the CWS warehouse. CWS notified Plaintiff that the “mandatory insurance policy [] protects both the clients and the facility,” and that “[t]he new insurance policy will be mutually beneficial, in that it offers security to both parties.”

14. Upon information and belief, CWS did not secure an insurance policy to cover the value of Plaintiff’s wines stored at the CWS warehouse, or that protected or offered security to Plaintiff, or that benefitted Plaintiff.

15. In or about November 2016, CWS attempted to unilaterally revoke the 2004 Contract and provided Plaintiff with a “Basic Storage Agreement.”

16. The Basic Storage Agreement was never signed by Plaintiff or CWS and set forth terms and conditions to which Plaintiff never assented.

17. The Basic Storage Agreement failed to comply with the New York State Truth in Storage Act, General Business Law §§ 607(1) and 607(3).

18. Beginning in or about November 2016, CWS attempted to collect and take automatic deductions for its monthly storage charges from a credit card that was not the credit card authorized by Plaintiff for such charges.

19. Plaintiff was nevertheless periodically informed that her account was current and fully paid.

20. CWS later claimed that arrears had accrued on Plaintiff's account with CWS.

21. Without proper notice to Plaintiff, and in violation of its obligations under New York law, upon information and belief, CWS disposed of Plaintiff's wine collection in or before July 2018.

22. Plaintiff has demanded that her wine collection be returned to her, but CWS has failed and/or refused to do so.

AND AS FOR A FIRST CAUSE OF ACTION
(Conversion)

23. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 22 of this Complaint with the same force and effect as though fully set forth herein.

24. Since 1997, CWS was in possession of Plaintiff's wine collection, which it stored for Plaintiff's benefit at the CWS warehouse.

25. During the time that CWS was in possession of Plaintiff's wine collection, CWS converted Plaintiff's wine collection by interfering with Plaintiff's right of possession to her wine

collection.

26. Plaintiff demanded the return of her wine collection from CWS, but CWS failed or refused to comply with Plaintiff's demand for the return of her property.

27. As a result of the foregoing, CWS converted Plaintiff's wine collection.

28. Plaintiff has suffered damages in an amount greater than the jurisdictional limits of any lower court, the specific amount to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION
(Violation of New York Truth in Storage Act)

29. Plaintiff repeats and reiterated each and every allegation set forth in paragraphs 1 through 28 of this Complaint with the same force and effect as though fully set forth herein.

30. The New York Truth in Storage Act, General Business Law § 605 *et seq.*, requires, among other things, that all warehouses for the storage of household goods provide written contracts with certain required disclosures (General Business Law § 607), and that such warehouses surrender to a consumer the goods stored upon payment of the storage charges (General Business Law § 608).

31. Additionally, the statute provides a private right of action for violations of the law, with remedies including but not limited to an award of treble damages and reasonable attorney's fees (General Business Law § 609).

32. At all relevant times herein, CWS was and is a warehouseman engaged in the business of storing goods for hire within the meaning of General Business Law § 606(a).

33. At all relevant times herein, Plaintiff's wine collection were noncommercial goods and intended to be used for primarily personal, family or household purposes within the meaning of General Business Law § 606(b).

34. The 2004 Contract failed to provide the disclosures required by the statute because it

(i) failed to accurately set forth the monthly storage charges, which were unilaterally and unlawfully increased by CWS without complying with the statute, (ii) failed to itemize other charges imposed by CWS, including but not limited to charges for insurance premiums, (iii) failed to comply with the inventory and notice requirements set forth in General Business Law § 607(1)(e), (iv) failed to comply with the limitation of liability provisions of General Business Law § 607(1)(f), and (v) failed to provide the notices set forth in General Business Law § 607(3).

35. The Basic Storage Agreement failed to provide the disclosures required by the statute because it (i) was unsigned in violation of General Business Law § 607(1), (ii) failed to accurately set forth the monthly storage charges, in violation of General Business Law § 607(1)(a), (iii) failed to itemize other charges imposed by CWS, including but not limited to charges for insurance premiums, in violation of General Business Law § 607(1)(d), (iv) failed to comply with the inventory and notice requirements set forth in General Business Law § 607(1)(e), (v) failed to comply with the limitation of liability provisions of General Business Law § 607(1)(f), and (vi) failed to provide the notices set forth in General Business Law § 607(3).

36. Additionally, CWS unlawfully detained Plaintiff's wine collection in violation of General Business Law § 608, and has failed and/or refused to return Plaintiff's wine collection to her despite due demand therefor.

37. As a result of the foregoing, Plaintiff has suffered damages in an amount greater than the jurisdictional limits of any lower court, which should be tripled pursuant to statute, and is further entitled to an award of her reasonable attorney's fees.

AS AND FOR THIRD CAUSE OF ACTION
(Violation of New York Uniform Commercial Code)

38. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1

through 37 of this Complaint with the same force and effect as though fully set forth herein.

39. Upon information and belief, CWS claimed a lien on Plaintiff's wine collection stored at the CWS warehouse arising from an alleged nonpayment of storage fees in the amount of Five Thousand Three Hundred Ninety-One Dollars and Eighty Cents (\$5,391.80).

40. Plaintiff denies that CWS had a right, title or interest in any such lien, and avers that no such lien was created.

41. Alternatively, CWS failed to comply with statutory provisions governing satisfaction of the claimed liens of warehousemen, which are set forth in New York Uniform Commercial Code ("UCC") §§ 7-206 and 7-210.

42. UCC § 7-206(e) provides as follows:

A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

43. The relevant provisions of UCC § 7-210 provide as follows:

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefore, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

- (1) All persons known to claim an interest in the goods must be notified.
- (2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.
- (3) The sale must conform to the terms of the notification.
- (4) The sale must be held at the nearest suitable place to where the goods are held or stored.
- (5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.

* * * * *

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

* * * * *

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

44. CWS violated the provisions of UCC § 7-206 by failing to hold the proceeds in excess of any claimed lien for delivery to Plaintiff.

45. CWS violated the provisions of UCC § 7-210 by (i) selling or disposing of Plaintiff's wine collection in a manner that was not commercially reasonable, (ii) failing to provide required notice to Plaintiff, (iii) failing to conduct a sale of Plaintiff's wine collection as required by statute,

(iv) failing to permit Plaintiff an opportunity to pay the claimed accrued storage charges, (v) failing to hold the balance of any sale of Plaintiff's wine collection for the benefit of Plaintiff, and (vi) failing to remit to Plaintiff the excess proceeds collected from a sale of Plaintiff's wine collection over and above the amount of the claimed lien of CWS.

46. As a result of the foregoing, Plaintiff has suffered damages in an amount greater than the jurisdictional limits of any lower court, the specific amount to be determined at trial.

AS AND FOR FOURTH CAUSE OF ACTION
(Violation of New York City Administrative Code §§ 2-330 and 2-333)

47. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 46 of this Complaint with the same force and effect as though fully set forth herein.

48. New York City Administrative Code § 2-330 provides as follows:

It is an unconscionable practice for a storage warehouse operator to accept a consumer's household goods for storage without entering into a written storage contract with the consumer.

49. New York City Administrative Code § 2-333 provides as follows:

It is an unconscionable practice for a storage warehouse operator or his authorized agent to sell a consumer's stored goods in satisfaction of alleged charges owed by the consumer unless the consumer shall first be afforded notice and the opportunity for arbitration before the New York Better Business Bureau on the issues of: (a) nonpayment of the alleged charges owing; and (b) the amount of such alleged charges. This provision does not affect any other legal right that a consumer may have prior to sale of his/her stored goods.

50. CWS is a storage warehouse operator within the meaning of these provisions of the New York City Administrative Code.

51. Plaintiff is a consumer within the meaning of these provisions of the New York City Administrative Code.

52. CWS violated the provisions of New York City Administrative Code § 2-330 because

CWS accepted Plaintiff's wine collection for storage without entering into the Basic Storage Agreement.

53. CWS violated the provisions of New York City Administrative Code § 2-333 because it failed to afford notice and the opportunity for arbitration to Plaintiff before selling or disposing of Plaintiff's wine collection.

54. As a result of the foregoing, Plaintiff has suffered damages in an amount greater than the jurisdictional limits of any lower court, the specific amount to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION
(Breach of Contract - the 2004 Contract)

55. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 54 of this Complaint with the same force and effect as though fully set forth herein.

56. Plaintiff and CWS entered into the 2004 Contract, whereby CWS agreed, among other things, to store Plaintiff's wine collection in exchange for an agreed upon storage fee.

57. Plaintiff complied with all terms and conditions of the 2004 Contract.

58. The 2004 Contract required CWS to, among other things, keep and safeguard Plaintiff's wine collection, to permit delivery of Plaintiff's wine collection to Plaintiff upon demand, to permit retrieval of Plaintiff's wine collection upon her request, and to charge the monthly storage fees set forth in the 2004 Contract.

59. CWS violated the terms and conditions of the 2004 Contract by (i) failing to keep and safeguard Plaintiff's wine collection, (ii) failing to permit delivery of Plaintiff's wine collection to her upon demand, (iii) failing to permit Plaintiff to retrieve her wine collection upon her request, and (iv) charging incrementally increased storage fees to Plaintiff.

60. In addition, CWS violated the terms and condition of the 2004 Contract by selling or disposing of Plaintiff's wine collection without her knowledge or consent, and by failing to comply with the notice and sale requirements set forth in paragraph 1 of the 2004 Contract.

61. As a result of the foregoing, Plaintiff has suffered damages in an amount greater than the jurisdictional limits of any lower court, the specific amount to be determined at trial.

AS AND FOR A SIXTH CAUSE OF ACTION
(Breach of Contract - Failure to Procure Insurance)

62. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 61 of this Complaint with the same force and effect as though fully set forth herein.

63. In or about September 2016, CWS promised to obtain an insurance policy that was intended to provide insurance coverage for the value of Plaintiff's wines stored at the CWS warehouse. CWS notified Plaintiff that the "mandatory insurance policy [] protects both the clients and the facility," and that "[t]he new insurance policy will be mutually beneficial, in that it offers security to both parties."

64. Upon information and belief, CWS breached its promise to Plaintiff by failing to obtain an insurance policy to cover the value of Plaintiff's wines stored at the CWS warehouse, or that protected or offered security to Plaintiff, or that benefitted Plaintiff.

65. As a result of the foregoing, Plaintiff has suffered damages in an amount greater than the jurisdictional limits of any lower court, the specific amount to be determined at trial.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract - Basic Storage Agreement)

66. Plaintiff repeats and reiterates each and every allegation contained in paragraphs 1 through 65 of this Complaint with the same force and effect as though fully set forth herein.

67. Plaintiff denies that she entered into the unsigned Basic Storage Agreement with CWS, and avers that she never assented to the terms and conditions of the Basic Storage Agreement.

68. Alternatively, Plaintiff alleges as follows:

69. Plaintiff complied with all terms and conditions of the Basic Storage Agreement.

70. The Basic Storage Agreement required CWS to, among other things, keep and

safeguard Plaintiff's wine collection, to permit delivery of Plaintiff's wine collection to Plaintiff upon demand, to permit retrieval of Plaintiff's wine collection upon her request, and to provide insurance coverage for Plaintiff's wine collection.

71. CWS violated the terms and conditions of the Basic Storage Agreement by (i) failing to keep and safeguard Plaintiff's wine collection, (ii) failing to permit delivery of Plaintiff's wine collection to her upon demand, (iii) failing to permit Plaintiff to retrieve her wine collection upon her request, and (iv) failing to provide insurance for Plaintiff's wine collection.

72. In addition, CWS violated the terms and condition of the Basic Storage Agreement by selling or disposing of Plaintiff's wine collection without her knowledge or consent, and by failing to comply with the sale requirements set forth in paragraph 8 of the Basic Storage Agreement.

73. The Basic Storage Agreement provides, in paragraph 12(d), that Plaintiff is entitled to her reasonable attorney's fees, costs and expenses as a prevailing party.

74. As a result of the foregoing, Plaintiff has suffered damages in an amount greater than the jurisdictional limits of any lower court, the specific amount to be determined at trial, plus her reasonable attorney's fees, costs and expenses incurred in this action.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

1. On the First Cause of Action, awarding damages in an amount greater than the jurisdictional limits of any lower court, the specific amount to be determined at trial;

2. On the Second Cause of Action, awarding damages in an amount greater than the jurisdictional limits of any lower court, such damages to be tripled pursuant to statute, and further awarding Plaintiff her reasonable attorney's fees, costs and expensed incurred in this action;

3. On the Third Cause of Action, awarding damages in an amount greater than the jurisdictional limits of any lower court, the specific amount to be determined at trial;

4. On the Fourth Cause of Action, awarding damages in an amount greater than the

jurisdictional limits of any lower court, the specific amount to be determined at trial;

5. On the Fifth Cause of Action, awarding damages in an amount greater than the jurisdictional limits of any lower court, the specific amount to be determined at trial;

6. On the Sixth Cause of Action, awarding damages in an amount greater than the jurisdictional limits of any lower court, the specific amount to be determined at trial;

7. On the Seventh Cause of Action, awarding damages in an amount greater than the jurisdictional limits of any lower court, and further awarding Plaintiff her reasonable attorney's fees, costs and expensed incurred in this action;

8. Awarding Plaintiff pre-judgment interest; and

9. Awarding such other and further relief as the Court may deem just and proper.

Dated: Garden City, New York
May 9, 2019

LAW OFFICE OF MARK E. GOIDELL

/s Mark E. Goidell

By: Mark E. Goidell, Esq.

Attorney for Plaintiff

666 Old Country Road, Suite 700

Garden City, New York 11530

Tel. (516) 683-0001

Fax. (516) 228-0383

mark@goidell.com