

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Klein v. Whirlpool Corp.

2021 NY Slip Op 03449 (N.Y. Ct. App. 2021) · No. 2018-06172 · Decided June 2, 2021

SUMMARY

The Appellate Division, Second Department, affirmed dismissal of the plaintiff's complaint against Whirlpool Corporation and other defendants for lack of personal jurisdiction. The court held that the plaintiff failed to comply with New York service requirements for individuals and corporations, and that the trial court should have declined to reach the alternative failure-to-state-a-claim ground because jurisdiction had not been acquired.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Hector D. LaSalle, P.J.; Mark C. Dillon, J.; Robert J. Miller, J.; Francesca E. Connolly, J.
JURISDICTION	New York
DECIDED	June 2, 2021
DOCKET	2018-06172
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order granting the defendants' motion under CPLR 3211(a)(7) and (8) to dismiss the complaint and denying the plaintiff's cross-motion for leave to amend.
STANDARD OF REVIEW	The Appellate Division reviewed the order granting dismissal under CPLR 3211(a)(8) for lack of personal jurisdiction and CPLR 3211(a)(7) for failure to state a cause of action. The opinion does not state a separate standard-of-review formulation.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Ralph Klein v. Whirlpool Corporation, P.C. Richard & Son, Two Whirlpool officers

TOPICS

service of process

personal jurisdiction

motions to dismiss

appellate procedure

breach of contract

PRACTICE AREAS

civil procedure

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contracts

consumer protection

QUESTIONS PRESENTED

1. Whether the defendants were properly served so that the court acquired personal jurisdiction.
2. Whether the Supreme Court should have reached the defendants' CPLR 3211(a)(7) motion to dismiss for failure to state a cause of action after determining that service was jurisdictionally defective.
3. Whether the plaintiff's cross-motion for leave to amend should affect the disposition.

HOLDINGS

1. The plaintiff failed to comply with the service requirements governing service upon a natural person and a corporation, and also failed to satisfy the requirements for service by mail under CPLR 312-a. The Supreme Court therefore properly dismissed the complaint under CPLR 3211(a)(8) for lack of personal jurisdiction.
2. Because the court had not acquired jurisdiction over the defendants, the Supreme Court should have denied as academic the branch of the defendants' motion under CPLR 3211(a)(7), rather than deciding that branch on the merits.

KEY QUOTATIONS

“When the requirements for service of process have not been met, it is irrelevant that defendant may have actually received the documents” (at 697)

FACTUAL BACKGROUND

Klein purchased a Whirlpool refrigerator from P.C. Richard & Son and alleged that the refrigerator was defective. He claimed that Whirlpool and the other defendants breached the sales contract, an Extended Service Protection contract, and the manufacturer's warranty by failing to repair or replace the refrigerator. Klein attempted service by mailing the summons and complaint to Whirlpool's headquarters in Benton Harbor, Michigan, and P.C. Richard's headquarters in Farmingdale, New York.

PROCEDURAL HISTORY

Ralph Klein commenced an action in Supreme Court, Nassau County, alleging claims arising from an allegedly defective refrigerator and asserting breach of contract, breach of an extended service contract, and breach of warranty. After Klein mailed copies of the summons and complaint to the defendants' headquarters, the defendants moved to dismiss for lack of personal jurisdiction and failure to state a cause of action. The Supreme Court granted the motion on both grounds and denied Klein's cross-motion to amend. The Appellate Division affirmed insofar as appealed from, holding that service was defective and that the personal-jurisdiction ground controlled.

DISPOSITION

affirmed

CASES CITED

- Matter of Bokhour v. New York City School Construction Authority, 70 A.D.3d 684, 684-685
- Raschel v. Rish, 69 N.Y.2d 694, 697
- HSBC Bank USA, N.A. v. Assouline, 177 A.D.3d 603, 605
- Bennett v. Acosta, 68 A.D.3d 910, 910
- DelGrosso v. Carroll, 185 A.D.3d 901, 903-904

OPINION

PER CURIAM.

Klein v Whirlpool Corp. (2021 NY Slip Op 03449) Klein v Whirlpool Corp. 2021 NY Slip Op 03449 Decided on June 2, 2021 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on June 2, 2021 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department HECTOR D. LASALLE, P.J. MARK C. DILLON ROBERT J. MILLER FRANCESCA E. CONNOLLY, JJ. 2018-06172 (Index No. 3608/17) [*1]Ralph Klein, appellant, vWhirlpool Corporation, et al, respondents.

Ralph Klein, Rockville Centre, NY, appellant pro se. Leader Berkon Colao & Silverstein LLP, New York, NY (Brian K. Cifuentes and Glen Silverstein of counsel), for respondents. DECISION & ORDER In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Nassau County (Antonio I. Brandveen, J.), dated March 30, 2018.

The order, insofar as appealed from, granted the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint. ORDERED that the order is affirmed insofar as appealed from, with costs. In or about October 2017, the plaintiff commenced this action against Whirlpool Corporation (hereinafter Whirlpool), P.C. Richard & Son (hereinafter P.C. Richard), and two Whirlpool officers, alleging that a Whirlpool refrigerator he purchased from P.C.

Richard was defective. The complaint alleged that the defendants breached the sales contract, the "Extended Service Protection" contract, and the manufacturer's warranty by failing to repair or replace the defective refrigerator upon his complaints.

After the plaintiff mailed a copy of the summons and complaint to Whirlpool's Benton Harbor, Michigan headquarters and another copy to P.C. Richard's headquarters in Farmingdale, the

defendants moved pursuant to CPLR 3211(a)(7) and (8) to dismiss the complaint.

The plaintiff cross-moved, inter alia, for leave to amend the complaint. The Supreme Court granted the defendants' motion on both asserted grounds, and denied the plaintiff's cross motion. The plaintiff appeals. The plaintiff did not comply with the service requirements of CPLR 308 governing personal service upon a natural person or CPLR 311 governing personal service upon a corporation.

Additionally, the plaintiff did not satisfy the requirements set forth in CPLR 312-a, governing personal service by mail, as he did not include with the papers he attempted to serve by mail a "statement of service by mail and acknowledgment of receipt" (CPLR 312-a[a]; see *Matter of Bokhour v New York City School Constr. Auth.*, 70 AD3d 684, 684-685). "When the requirements for service of process have not been met, it is irrelevant that defendant may have actually received the documents" (*Raschel v Rish*, 69 NY2d 694, 697; see *HSBC Bank USA, N.A. v Assouline*, 177 AD3d 603, 605).

Accordingly, the Supreme Court properly granted that branch of the defendants' motion which was pursuant to CPLR 3211(a)(8) to dismiss the complaint for lack of personal jurisdiction (see *Matter of Bokhour v New York City School Constr. Auth.*, 70 AD3d at 684-685; [*2]*Bennett v Acosta*, 68 AD3d 910, 910). Since the court had not acquired jurisdiction over the defendants, it should have denied as academic that branch of the defendants' motion which was pursuant to CPLR 3211(a)(7) to dismiss the complaint for failing to state a cause of action, instead of addressing that branch on the merits (cf.

DelGrosso v Carroll, 185 AD3d 901, 903-904). In light of our determination, we need not address the parties' remaining contention. LASALLE, P.J., DILLON, MILLER and CONNOLLY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court