

**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

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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

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