

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

Renhe Zhang v. Gerald W. Purcell Assoc., Ltd.

130 A.D.3d 813 (N.Y. App. Div. 2d Dep't 2015) · No. 2013-06028 · Decided July 15, 2015

SUMMARY

The New York Appellate Division, Second Department, affirmed an order denying the plaintiff's motion to restore the action to the trial calendar. The court held that restoration was unavailable because the action had been dismissed under CPLR 3211(a)(8) for lack of personal jurisdiction, rather than dismissed under CPLR 3404 for neglect to prosecute.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Peter B. Skelos, J.P.; L. Priscilla Hall, J.; Sheri S. Roman, J.; Colleen D. Duffy, J.
JURISDICTION	New York
DECIDED	July 15, 2015
DOCKET	2013-06028
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order of the Supreme Court, Queens County, denying her motion to restore the action to the trial calendar.
PRECEDENTIAL VALUE	published
PARTIES	Renhe Zhang v. Gerald W. Purcell Associates, Ltd., et al.

TOPICS

- personal jurisdiction
- motions to dismiss
- appellate procedure
- civil procedure
- breach of contract

PRACTICE AREAS

- civil procedure
- appellate procedure
- contracts

QUESTIONS PRESENTED

1. Whether an action dismissed under CPLR 3211(a)(8) for lack of personal jurisdiction may be restored to the trial calendar by motion.

HOLDINGS

1. A motion to restore is appropriate for an action marked off or struck from the trial calendar and then dismissed under CPLR 3404 for neglect to prosecute, but an action dismissed under CPLR 3211(a)(8) for lack of personal jurisdiction cannot be restored by that procedure.

KEY QUOTATIONS

“While such a motion is appropriate where an action is marked off or struck from the trial calendar and then dismissed pursuant to CPLR 3404 for neglect to prosecute (see e.g. Agli v O'Connor, 92 AD3d 815), the present action was directed to be dismissed against the defendants pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction. Thus, the action could not be "restored" by way of a motion.” (130 A.D.3d at 813)

FACTUAL BACKGROUND

Zhang commenced an action seeking, among other relief, damages for breach of contract. The Supreme Court dismissed the action against all defendants under CPLR 3211(a)(8) for lack of personal jurisdiction. Zhang subsequently sought to restore the action to the trial calendar, although the action had not been dismissed for neglect to prosecute under CPLR 3404.

PROCEDURAL HISTORY

The plaintiff commenced an action, inter alia, for breach of contract. The Supreme Court directed dismissal against all defendants under CPLR 3211(a)(8) for lack of personal jurisdiction. The plaintiff later moved to restore the action to the trial calendar; the Supreme Court denied that motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Agli v. O'Connor, 92 A.D.3d 815

OPINION

PER CURIAM.

Renhe Zhang v Gerald W. Purcell Assoc., Ltd. (2015 NY Slip Op 06133) Renhe Zhang v Gerald W. Purcell Assoc., Ltd. 2015 NY Slip Op 06133 Decided on July 15, 2015 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 July 15, 2015 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department PETER B. SKELOS, J.P. L. PRISCILLA HALL SHERI S. ROMAN COLLEEN D. DUFFY, JJ. 2013-06028 (Index No. 2971/05) [*1]Renhe Zhang, appellant, vGerald W. Purcell Associates, Ltd., et al., respondents, et al., defendants. Matthew Jeon, P.C., New York, N.Y., for appellant.

DECISION & ORDER In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Queens County (Brathwaite Nelson, J.), entered March 28, 2013, which denied her motion to restore the action to the trial calendar. ORDERED that the order is affirmed, without costs or disbursements.

The plaintiff commenced this action, inter alia, to recover damages for breach of contract. An order of the Supreme Court, Queens County, dated May 18, 2006, directed the dismissal of the action as against all defendants, pursuant to CPLR 3211(a)(8), for lack of personal jurisdiction.

The plaintiff thereafter filed a motion seeking to restore the action to the trial calendar. The Supreme Court properly denied the plaintiff's motion. While such a motion is appropriate where an action is marked off or struck from the trial calendar and then dismissed pursuant to CPLR 3404 for neglect to prosecute (see e.g. Agli v O'Connor, 92 AD3d 815), the present action was directed to be dismissed against the defendants pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction.

Thus, the action could not be "restored" by way of a motion. SKELOS, J.P., HALL, ROMAN and DUFFY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court