

**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.

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

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