

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