Decided and Entered: June 6, 2019   527916
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CEDAR RUN HOMEOWNERS'
    ASSOCIATION, INC., et al.,
                        Respondents,

        v   MEMORANDUM AND ORDER

ADIRONDACK DEVELOPMENT GROUP,
    LLC,
                        Appellant.
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Calendar Date: April 30, 2019

Before: Garry, P.J., Clark, Mulvey, Devine and Pritzker, JJ.

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        Ernstrom & Dreste, LLP, Rochester (Timothy D. Boldt of
counsel), for appellant.

        Donald Zee, PC, Albany (Andrew Brick of counsel), for
respondents.

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Clark, J.

        Appeal from an order of the Supreme Court (Elliott III,
J.), entered May 2, 2018 in Rensselaer County, which denied
defendant's motion to dismiss the amended complaint.

        In 2010, plaintiffs filed a summons and complaint in the
Rensselaer County Clerk's office seeking to recover damages for
alleged defects in certain condominium units built by defendant.
After being served with an amended complaint in 2018, defendant
moved, pursuant to CPLR 3211 (a) (8), to dismiss the amended
complaint on the basis that plaintiffs failed to properly serve

the summons and original complaint and, thus, Supreme Court did
not have personal jurisdiction over it. Supreme Court denied
the motion, finding that it had acquired personal jurisdiction
over defendant through plaintiffs' service of process upon the
Secretary of State. Defendant appeals.

        "The plaintiff bears the ultimate burden of proving by a
preponderance of the evidence that jurisdiction over the
defendant was obtained by proper service of process" (Bankers
Trust Co. of Cal v Tsoukas, 303 AD2d 343, 343 [2003] [citation
omitted]; accord Pearson v 1296 Pac. St. Assoc., Inc., 67 AD3d
659, 659-660 [2009], lv denied 14 NY3d 705 [2010]). Proof of
service, often in the form of an affidavit of service (see CPLR
306 [d]), must include "the papers served, the person who was
served and the date, time [and] address [of such service], . . .
and set forth facts showing that the service was made by an
authorized person and in an authorized manner" (CPLR 306 [a]).
Additionally, "[b]ecause service of process is necessary to
obtain personal jurisdiction over defendants, courts require
strict compliance with the statutory methods of service" (Pierce
v Village of Horseheads Police Dept., 107 AD3d 1354, 1355
[2013]). As relevant here, "[s]ervice of process on the
secretary of state as agent of a domestic limited liability
company . . . shall be made by personally delivering to and
leaving with the secretary of state or his or her deputy, or
with any person authorized by the secretary of state to receive
such service, . . . duplicate copies of such process together
with the statutory fee" (Limited Liability Company Law § 303
[a]).

        Here, plaintiffs failed to submit an affidavit of service
or any other proof that would satisfy their burden of
demonstrating that they acquired personal jurisdiction over
defendant by, among other things, complying with Limited
Liability Company Law § 303 (a) (see generally Matter of Czajka
v Dellehunt, 125 AD3d 1177, 1182 [2015]). Although plaintiffs
proffered an unsigned receipt of service purportedly generated
by the Office of the Secretary of State, that receipt did not
set forth the papers served, whether duplicate copies of those
papers were delivered to the Secretary of State, the time of

service or facts showing that service was made by an authorized person (see Limited Liability Company Law § 303 [a]; CPLR 306 [a], [d]). Accordingly, as plaintiffs failed to carry their burden of establishing proper service, Supreme Court should have granted defendant's motion to dismiss for lack of personal jurisdiction (cf. Matter of Czajka v Dellehunt, 125 AD3d at 1182; Janko Pool Serv. v Berelson, 145 AD2d 897, 898-899 [1988]).

Garry, P.J., Mulvey, Devine and Pritzker, JJ., concur.

ORDERED that the order is reversed, on the law, with costs, motion granted and amended complaint dismissed.

ENTER:

Robert D. Mayberger
Clerk of the Court