

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12677
C/nl

_____AD3d_____

Argued - October 6, 2006

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
WILLIAM F. MASTRO
STEVEN W. FISHER, JJ.

2005-10026

DECISION & ORDER

County of Nassau, appellant, v Thomas Yohannan,
et al., respondents.

(Index No. 4885/05)

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Gerald R. Podlesak and
Barbara Van Riper of counsel), for appellant.

Mitchell Dranow, Mineola, N.Y., for respondent.

In an action to forfeit a motor vehicle pursuant to Nassau County Administrative Code § 8-7.0(g)(4), the plaintiff appeals from an order of the Supreme Court, Nassau County (Joseph, J.), dated September 22, 2005, which granted that branch of the defendants' motion which was to dismiss the complaint pursuant to CPLR 3211(a)(8).

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiff's contention, the Supreme Court properly granted that branch of the defendants' motion which was to dismiss the complaint pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction because of the plaintiff's failure to meet the due diligence requirement for substituted service pursuant to CPLR 308(4) (*see Sanders v Elie*, 29 AD3d 773; *O'Connell v Post*, 27 AD3d 630). Before affixing a copy of the summons and complaint on the front door of the defendants' residence, the plaintiff's process server made only two attempts at service, both on weekdays, during hours when it reasonably could have been expected that the defendants were either working or in transit to or from work (*see Earle v Valente*, 302 AD2d 353). Moreover, there is nothing in the record to indicate that the process server made any attempt to inquire of neighbors as

November 21, 2006

Page 1.

COUNTY OF NASSAU v YOHANNAN

to the defendants' working habits (*see Walker v Manning*, 209 AD2d 691, 692; *Fattarusso v Levco Am. Improvement Corp.*, 144 AD2d 626), or to ascertain the defendants' respective business addresses for the purpose of effectuating personal service at those locations pursuant to CPLR 308(1) or (2) (*see Sanders v Elie, supra; O'Connell v Post, supra; Earle v Valente, supra; Gurevitch v Goodman*, 269 AD2d 355; *Moran v Harting*, 212 AD2d 517).

“[A]lthough the defendant[s] did admit receipt of the pleadings, actual notice of the lawsuit does not cure the jurisdictional defect” (*DeShong v Marks*, 144 AD2d 623, 624; *see Kaszovitz v Weiszman*, 110 AD2d 117, 120).

SCHMIDT, J.P., SANTUCCI, MASTRO and FISHER, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court