

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

D12684
C/hu

_____AD3d_____

Argued - October 13, 2006

ANITA R. FLORIO, J.P.
ROBERT W. SCHMIDT
FRED T. SANTUCCI
ROBERT J. LUNN, JJ.

2006-04869

DECISION & ORDER

Ohio Savings Bank, respondent, v Morgan
M. Munsey, appellant, et al., defendants.

(Index No. 34007/03)

John L. Edmonds, Jamaica, N.Y., for appellant.

Berkman, Henoch, Peterson & Peddy, P.C., Garden City, N.Y. (Lisa M. Confusione
and Sara Z. Boriskin of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Morgan M. Munsey appeals from an order of the Supreme Court, Kings County (Marano, J.H.O.), dated April 25, 2006, which, after a hearing, in effect, denied his motion to vacate the judgment of foreclosure and sale on the ground that the court did not have personal jurisdiction.

ORDERED that the order is affirmed, with costs.

“An appearance by a defendant in an action is deemed to be the equivalent of personal service of a summons upon him, and therefore confers personal jurisdiction over him, unless he asserts an objection to jurisdiction either by way of motion or in his answer” (*Skyline Agency v Coppotelli*, 117 AD2d 135, 140; *see also* CPLR 320; *National Loan Invs., Inc., L.P. v Piscitello*, 21 AD3d 537). The appellant neither moved to dismiss the complaint on the ground of lack of personal jurisdiction nor asserted lack of personal jurisdiction in his answer (*see* CPLR 3211[a][8]; CPLR 3211[e]). Accordingly, the appellant waived any claim that the court lacked personal jurisdiction over him in this foreclosure action (*see Woicik v Town of East Hampton*, 207 AD2d 356).

November 21, 2006

Page 1.

OHIO SAVINGS BANK v MUNSEY

The appellant's remaining contentions are without merit.

FLORIO, J.P., SCHMIDT, SANTUCCI and LUNN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large initial "J".

James Edward Pelzer
Clerk of the Court