

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

D17194
X/cb

_____AD3d_____

Argued - November 13, 2007

ROBERT W. SCHMIDT, J.P.
PETER B. SKELOS
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-07193

DECISION & ORDER

County of Nassau, appellant, v Daniel V. Barrios,
et al., respondents, et al., defendant.

(Index No. 13559/05)

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

Michael A. Montesano, P.C., Glen Cove, N.Y. (Theresa Vazquez of counsel), for respondents.

In a civil forfeiture action pursuant to Administrative Code of the County of Nassau § 8-7.0(g), the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Alpert, J.), entered July 12, 2006, as granted that branch of the motion of the defendants Daniel V. Barrios and Daniel E. Barrios which was to dismiss the complaint insofar as asserted against them pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Under the particular circumstances of this case, the plaintiff's process server, who attempted to effectuate service of the summons and complaint upon the defendants Daniel V. Barrios and Daniel E. Barrios (hereinafter the defendants) via the "nail and mail" method of service, did not satisfy the "due diligence" requirement of CPLR 308(4). Accordingly, the Supreme Court correctly granted that branch of the defendants' motion which was to dismiss the complaint insofar as asserted

December 11, 2007

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against them for lack of personal jurisdiction (*see* CPLR 3211[a][8]; *County of Nassau v Long*, 35 AD3d 787, 787-788; *County of Nassau v Yohannan*, 34 AD3d 620, 621; *County of Nassau v Letosky*, 34 AD3d 414, 415).

SCHMIDT, J.P., SKELOS, COVELLO and BALKIN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court