

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

D17872
C/prt

_____AD3d_____

Submitted - December 12, 2007

ROBERT A. SPOLZINO, J.P.
PETER B. SKELOS
ROBERT A. LIFSON
WILLIAM E. McCARTHY, JJ.

2007-03510

DECISION & ORDER

Wells Fargo Bank, N.A., respondent,
v Dennis McGloster, et al., appellants,
et al., defendants.

(Index No. 2865/05)

Clair & Gjertsen, Scarsdale, N.Y. (Ira S. Clair of counsel), for appellants.

Steven J. Baum, P.C., Buffalo, N.Y. (Michael J. Wrona of counsel), for respondent.

In a mortgage foreclosure action, the defendants Dennis McGloster and Sandra McGloster appeal from an order of the Supreme Court, Rockland County (Berliner, J.), dated March 16, 2007, which denied their motion to vacate a judgment of foreclosure and sale of the same court entered November 4, 2005, upon their default in answering the complaint.

ORDERED that the order is affirmed, with costs.

The motion of the defendants Dennis McGloster and Sandra McGloster to vacate the judgment of foreclosure and sale was properly denied. The affidavit of the process server constituted prima facie evidence of proper service pursuant to CPLR 308(2) (*see Bankers Trust Co. of Cal. v Tsoukas*, 303 AD2d 343; *NYCTL 1997-1 Trust v Nillas*, 288 AD2d 279; *Simmons First Natl. Bank v Mandracchia*, 248 AD2d 375). Contrary to the movants' contentions, the claimed discrepancies between Sandra McGloster's appearance and the description contained in the process server's affidavit were too minor to warrant a hearing (*see NYCTL 1997-1 Trust v Nillas*, 288 AD2d 279;

Green Point Sav. Bank v Clark, 253 AD2d 514; *Simmons First National Bank v Mandracchia*, 248 AD2d 375).

SPOLZINO, J.P., SKELOS, LIFSON and McCARTHY, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court