

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

D17881
C/prt

_____AD3d_____

Argued - December 21, 2007

WILLIAM F. MASTRO, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
THOMAS A. DICKERSON, JJ.

2007-02733

DECISION & ORDER

Hiram Segarra, et al., respondents,
v Michael Evans, et al., appellants.

(Index No. 19949/05)

John P. Humphreys, New York, N.Y. (Eric P. Tosca and Denise L. Thomas of counsel), for appellants.

Robert D. Rosen (Alexander J. Wulwick, New York, N.Y., of counsel), for respondents.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Schmidt, J.), dated January 18, 2007, which denied their motion, in effect, pursuant to CPLR 3211(a)(8) to dismiss the complaint on the ground of lack of personal jurisdiction.

ORDERED that the order is reversed, on the law and the facts, with costs, and the matter is remitted to the Supreme Court, Kings County, for a hearing on the issue of whether proper service of process was made upon the defendants in accordance with the service and filing requirements of Vehicle and Traffic Law § 253(2), and thereafter for a new determination of the defendants' motion.

The Supreme Court summarily concluded that the defendants had been properly served with process in accordance with the service and filing requirements of Vehicle and Traffic Law § 253(2) and denied their motion, in effect, pursuant to CPLR 3211(a)(8) to dismiss the complaint. Under the circumstances of this case, considering the affidavits of service, the unclaimed certified mailing envelopes, and the certificates of ordinary mailing, before the motion can be decided, a

hearing is necessary in light of the defendants' sworn denials of receipt of process, in order to determine whether there was compliance with the service and filing requirements of the statute (*see Balancio v Santorelli*, 267 AD2d 189; *Jean-Laurent v Nicholas*, 182 AD2d 805).

MASTRO, J.P., SANTUCCI, BALKIN and DICKERSON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court