

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

D18914
X/prt

_____AD3d_____

Submitted - March 13, 2008

ROBERT A. LIFSON, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS, JJ.

2007-01774

DECISION & ORDER

Mirelle Zion, et al., respondents,
v Carlotta Peters, appellant.

(Index No. 17738/01)

James G. Bilello, Westbury, N.Y. (Martina I. Schmidt of counsel), for appellant.

In an action to recover damages for personal injuries, etc., the defendant appeals from so much of an order of the Supreme Court, Kings County (Held, J.), dated January 17, 2007, as denied her renewed motion to dismiss the complaint pursuant to CPLR 3211(a)(8).

ORDERED that the order is reversed insofar as appealed from, on the law, with costs and the matter is remitted to the Supreme Court, Kings County, for further proceedings consistent herewith.

The defendant's sworn, detailed, and specific statements that she no longer resided at the address recited in the process server's affidavit of service when service of the summons and complaint was purportedly made pursuant to CPLR 308(4), entitled her to a hearing, before a determination of her motion to dismiss, on the issue of whether personal jurisdiction was acquired over her (*see Dunn v Pallett*, 42 AD3d 807; *Bankers Trust Co. of Cal. v Tsoukas*, 303 AD2d 343; *Bank of Am. Natl. Trust & Sav. Assn. v Herrick*, 233 AD2d 351). Therefore, we remit the matter to the Supreme Court, Kings County, for such a hearing and a new determination thereafter.

LIFSON, J.P., FLORIO, ANGIOLILLO and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

April 15, 2008

ZION v PETERS