

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

D21614  
X/kmg

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Submitted - November 25, 2008

STEVEN W. FISHER, J.P.  
ANITA R. FLORIO  
EDWARD D. CARNI  
CHERYL E. CHAMBERS, JJ.

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2008-01160

DECISION & ORDER

Aames Funding Corporation, etc., respondent,  
v Leonard W. Houston, et al., appellants, et al.,  
defendants.

(Index No. 430/05)

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Leonard W. Houston, Middletown, N.Y., appellant pro se.

Lucille Houston, Middletown, N.Y., appellant pro se.

Steven J. Baum, P.C., Buffalo, N.Y. (Charles D.J. Case of counsel), for respondent.

In an action to foreclose a mortgage, the defendants Leonard W. Houston and Lucille Houston separately appeal from an order of the Supreme Court, Orange County (Owen, J.), dated January 3, 2008, which granted the plaintiff's motion to extend a notice of pendency for an additional three years and denied the cross motion of the defendant Leonard W. Houston, in which the defendant Lucille Houston joined, to cancel the notice of pendency.

ORDERED that the order is affirmed with costs.

A notice of pendency is valid for three years from the date of filing. A party seeking to extend a notice of pendency for an additional three-year period must first make a showing of good cause (*see* CPLR 6513; *Matter of Sakow*, 97 NY2d 436, 442; *RKO Props., Ltd. v Boymelgreen*, 31 AD3d 625). Here, the plaintiff established good cause for extending the notice of pendency by showing that the instant foreclosure action was automatically stayed as a result of one of the appellants having filed for bankruptcy (*see Stassou v Casini & Huang Constr.*, 203 AD2d 357).

December 23, 2008

Page 1.

AAMES FUNDING CORPORATION v HOUSTON

The appellants' challenge to the plaintiff's standing is not properly before this Court, as we are bound by the law of the case established by the decision and order on the prior appeal of this matter (*see Ames Funding Corp. v Houston*, 44 AD3d 692, 693; *see generally Abbas v Cole*, 44 AD3d 31, 37). In any event, even if the law of the case doctrine was inapplicable, the defendants waived the defense of standing by not raising it as an affirmative defense or by way of motion to dismiss (*see CPLR 3211[e]; Matter of Fossella v Dinkins*, 66 NY2d 162, 167-168; *Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d 239, 242-243).

FISHER, J.P., FLORIO, CARNI and CHAMBERS, JJ., concur.

ENTER:

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

James Edward Pelzer  
Clerk of the Court