

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

D25293
O/kmg

_____AD3d_____

Argued - November 10, 2009

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2008-00535

DECISION & ORDER

Deutsche Bank National Trust Company, etc.,
respondent, v St. Clair Jackson, appellant, et al.,
defendants.

(Index No. 26143/06)

Lester & Associates, P.C., Garden City, N.Y. (Roy J. Lester of counsel), for appellant.

Forsyth, Howe, O'Dwyer, Kalb & Murphy, P.C., Rochester, N.Y. (Gerald N. Murphy of counsel), for respondent.

In an action to foreclose a mortgage, the defendant St. Clair Jackson appeals from a judgment of the Supreme Court, Kings County (Jackson, J.), dated November 30, 2007, which, *inter alia*, confirmed a referee's report and directed the sale of the subject property.

ORDERED that the judgment is affirmed, with costs.

Having failed to interpose an answer which asserted the defense of lack of standing or to file a timely pre-answer motion raising that defense, the defendant St. Clair Jackson waived such defense pursuant to CPLR 3211(e) (*see HSBC Bank, USA v Dammond*, 59 AD3d 679; *Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d 239). Moreover, contrary to Jackson's contention, under the circumstances of this case, there was no need to conduct a hearing prior to the issuance of the referee's report (*see LBV Properties v Greenport Dev. Co.*, 188 AD2d 588).

December 8, 2009

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Jackson's remaining contentions are without merit.

FISHER, J.P., ANGIOLILLO, LOTT and SGROI, 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