

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

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Submitted - November 13, 2009

JOSEPH COVELLO, J.P.  
FRED T. SANTUCCI  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL, JJ.

2009-00192

DECISION & ORDER

Indymac Bank, F.S.B., respondent, v Stuart M.  
Kamen, appellant, et al., defendants.

(Index No. 8944/08)

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Barry A. Kamen, PLLC, Stony Brook, N.Y., for appellant.

Steven J. Baum, P.C., Buffalo, N.Y. (Adam Gross and Michelle D. Maccagnano of  
counsel), for respondent.

In an action to foreclose a mortgage, the defendant Stuart M. Kamen appeals from an order of the Supreme Court, Suffolk County (Tanenbaum, J.), dated November 17, 2008, which granted the plaintiff's motion for summary judgment, and denied his cross motion to dismiss the complaint.

ORDERED that the order is affirmed, with costs.

In support of its motion for summary judgment, the plaintiff made a prima facie showing of its entitlement to judgment as a matter of law. In opposition, the appellant failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Contrary to the appellant's contention, the notice of default sent to him by the respondent duly afforded him an opportunity to cure his default, as required by the terms of the subject mortgage. Furthermore, the notice of default otherwise substantially complied with the terms of the mortgage (*see First Trust Natl. Assn. v Meisels*, 234 AD2d 414; *Federal Home Loan Mtge. Corp. v Cool*, 1995 Me Super LEXIS 126, \*4-5; *cf. Moet II v McCarthy*, 229 AD2d 876).

December 15, 2009

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The appellant's contentions with respect to improper service of the summons and complaint are without merit. The affidavit from the respondent's process server constituted prima facie evidence of proper service pursuant to CPLR 308(2), and the appellant failed to raise a triable issue of fact (*see Cavalry Portfolio Servs., LLC v Reisman*, 55 AD3d 524, 525; *Remington Invs. v Seiden*, 240 AD2d 647).

COVELLO, J.P., SANTUCCI, CHAMBERS and HALL, 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