

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

D25659
Y/prt

_____AD3d_____

Submitted - December 4, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-01958

DECISION & ORDER

Anne Marie King, et al., respondents,
v John Gil, et al., appellants.

(Index No. 24249/07)

Ivone, Devine & Jensen, LLP, Lake Success, N.Y. (Robert Devine of counsel), for appellants.

In an action to recover damages for medical malpractice, etc., the defendants appeal from an order of the Supreme Court, Suffolk County (Cohalan, J.), dated January 13, 2009, which, after a hearing, denied their motion to dismiss the complaint pursuant to CPLR 3211(a)(8).

ORDERED that the order is affirmed, without costs or disbursements.

Contrary to the defendants' contention, the Supreme Court's determination that the testimony of the process server was more credible than that of the defense witnesses is entitled to great deference on appeal, and its conclusion that service was properly effected upon the defendants is supported by the record (*see Aguilera v Pistilli Constr. & Dev. Corp.*, 63 AD3d 765, 767; *Mastroianni v Rallye Glen Cove, LLC*, 59 AD3d 686, 687; *Gass v Gass*, 42 AD3d 393; *Ahrens v Chisena*, 40 AD3d 787, 788; *Lattintown Harbor Prop. Owners Assn., Inc. v Agostino*, 34 AD3d 536, 538). Accordingly, we discern no basis in the record to disturb the Supreme Court's resolution of the issues.

The defendants' remaining contentions are without merit.

MASTRO, J.P., FISHER, BELEN and AUSTIN, 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