

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

D26157  
W/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 19, 2010

STEVEN W. FISHER, J.P.  
DANIEL D. ANGIOLILLO  
ARIEL E. BELEN  
PLUMMER E. LOTT, JJ.

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2008-10994

DECISION & ORDER

In the Matter of Glenn P. Glenn, petitioner, v Ken Maple, LLC, respondent, New York City Department of Housing Preservation and Development, appellant.

(Index No. 2400/06)

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Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Norman Corenthal of counsel), for appellant.

Gutman, Mintz, Baker & Sonnenfeldt, P.C., New Hyde Park, N.Y. (Kenneth Mintz and Olga Someras of counsel), for respondent.

In a proceeding to enforce compliance by Ken Maple, LLC, with the New York City Housing Maintenance Code (Administrative Code of City of NY, tit 27, ch 2), the New York City Department of Housing Preservation and Development appeals, by permission, from an order of the Appellate Term for the 2nd, 11th, and 13th Judicial Districts dated September 29, 2008, which reversed an order of the Civil Court, Kings County (Gonzalez, J.), dated May 24, 2007, denying the motion of Ken Maple, LLC, to vacate a judgment entered upon its default in answering or appearing and to dismiss the petition, and thereupon granted the motion, vacated the judgment entered upon default, and dismissed the proceeding.

ORDERED that the order dated September 29, 2008, is affirmed, with costs.

Under the circumstances of this case, the Civil Court did not have the authority under section 27-2115(h) of the Housing Maintenance Code of the Administrative Code of the City of New York to direct service of the order to show cause and the petition commencing this proceeding upon

February 16, 2010

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MATTER OF GLENN v KEN MAPLE, LLC

Ken Maple, LLC (hereinafter the owner), by regular first class mail (*see* Administrative Code of City of NY §§ 27-2115[h], [j]; *Matter of Ebanks v Skyline NYC, LLC*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]). Consequently, service was never properly effected upon the owner, and the Appellate Term properly reversed the order of the Civil Court denying the owner's motion, inter alia, to vacate the judgment entered on its default in answering or appearing and to dismiss the petition, and thereupon properly granted the motion, vacated the judgment, and dismissed the proceeding.

FISHER, J.P., ANGIOLILLO, BELEN and LOTT, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court