

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

D27554
G/prt

_____AD3d_____

Submitted - May 3, 2010

STEVEN W. FISHER, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2009-11545

DECISION & ORDER

Sylvia Lobo, et al., appellants, v Maria Fernanda
Soto, respondent, et al., defendants.

(Index No. 24277/07)

Clair & Gjertsen, Scarsdale, N.Y. (Ira S. Clair of counsel), for appellants.

In an action to foreclose a mortgage, the plaintiffs appeal from an order of the Supreme Court, Queens County (Taylor, J.), entered June 15, 2009, which denied their motion, inter alia, for a judgment of foreclosure and sale on the ground that they failed to serve the court-appointed referee with the motion in strict compliance with the order to show cause.

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

““The method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with”” (*City of New York v Miller*, 72 AD3d 726, *1, quoting *Matter of El Greco Socy. of Visual Arts, Inc. v Diamantidis*, 47 AD3d 929, 929; see *Matter of Del Villar v Vekiarelis*, 59 AD3d 642, 643; *Matter of Master v Pohanka*, 43 AD3d 478, 480, *affd* 10 NY3d 620; *Matter of Hennessey v DiCarlo*, 21 AD3d 505, 505). Here, the Supreme Court correctly determined that the plaintiffs failed to strictly comply with the method of service set forth in the order to show cause in connection with service of the motion on the referee.

The plaintiffs’ remaining contentions are without merit.

May 25, 2010

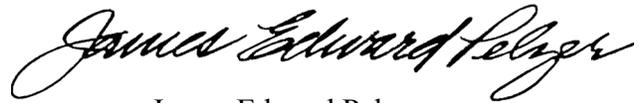
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Accordingly, the Supreme Court properly denied the plaintiffs' motion.

FISHER, J.P., DICKERSON, ENG and BELEN, 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