

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

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_____AD3d_____

Submitted - January 5, 2011

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2010-02750

DECISION & ORDER

American Home Mortgage, etc., respondent, v Melvin
Villaflor, et al., appellants, et al., defendants.

(Index No. 4427/07)

Fenster & Kurland, LLP, New City, N.Y. (Adam K. Kurland of counsel), for
appellants.

Hogan Lovells US, LLP, New York, N.Y. (Allison J. Schoenthal, Victoria
McKenney, and Jessica L. Ellsworth of counsel), for respondent.

In an action to foreclose a mortgage, the defendants appeal from an order of the
Supreme Court, Rockland County (Garvey, J.), entered July 17, 2009, which, after a hearing, denied
their motion to vacate so much of a judgment of foreclosure and sale of the same court dated June
4, 2008, as was entered against the defendant Melvin Villaflor upon his failure to appear or answer
the complaint, and to dismiss the complaint insofar as asserted against that defendant for lack of
personal jurisdiction.

ORDERED that the order is affirmed, with costs.

This Court possesses the authority to review a determination rendered after a hearing
which is as broad as that of the hearing court, and may render the judgment it finds warranted by the
facts, taking into account that in a close case, the hearing court had the advantage of seeing the
witnesses (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492,
499). Here, the hearing court's determination that the defendant Melvin Villaflor was properly served

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pursuant to CPLR 308(1) was supported by the credible testimony of the process server adduced at the hearing (*see King v Gil*, 69 AD3d 678; *Federal Fin. Co. v Public Adm'r, Kings County*, 47 AD3d 881, 882; *Ahrens v Chisena*, 40 AD3d at 788), and we discern no basis for disturbing that determination.

MASTRO, J.P., ANGIOLILLO, BALKIN, LOTT and AUSTIN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court