

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

D30230
O/prt

_____AD3d_____

Argued - February 10, 2011

A. GAIL PRUDENTI, P.J.
RANDALL T. ENG
ARIEL E. BELEN
SANDRA L. SGROI, JJ.

2009-08190

DECISION & ORDER

Candida Lopez, respondent, v
John DePietro, appellant.

(Index No. 10450/04)

Samuel A. Ehrenfeld, New York, N.Y., for appellant.

Klapper & Klapper, P.C. (Arnold E. DiJoseph, P.C., New York, N.Y., of counsel),
for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Richmond County (D'Oca, R.), dated July 23, 2009, which, after a hearing to determine the validity of service of process, determined that personal jurisdiction was properly obtained over the defendant and denied his motion to vacate an amended judgment of the same court (Vitaliano, J.), dated October 30, 2008, entered upon his default in appearing or answering the complaint.

ORDERED that the order is affirmed, with costs.

An application for an adjournment is addressed to the sound discretion of the hearing court, which must engage in a balanced consideration of all of the relevant factors (*see Matter of Anthony M.*, 63 NY2d 270, 283; *Matter of Ciccone v Ciccone*, 73 AD3d 1052, 1052-1053; *Diamond v Diamante*, 57 AD3d 826, 827; *Matter of Venditto v Davis*, 39 AD3d 555). Contrary to the defendant's contention, under all of the attendant circumstances, the Referee did not improvidently exercise his discretion in denying the defendant's request for an adjournment to produce additional testimony.

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In reviewing the hearing court's determination, this Court possesses authority "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)" (*American Home Mtge. v Villaflor*, 80 AD3d 637). Here, the hearing court's determination that the defendant was properly served was supported by the credible evidence 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 787, 788), and we discern no basis for disturbing that determination. We further note that the hearing court properly determined that the process server's attempts to personally serve the defendant at his residence satisfied the due diligence requirement of CPLR 308(4) (see *State of New York v Mappa*, 78 AD3d 926; *JPMorgan Chase Bank, N.A. v Szajna*, 72 AD3d 902, 903; *County of Nassau v Gallagher*, 43 AD3d 972, 973-974; *Akler v Chisena*, 40 AD3d 559; *Lemberger v Khan*, 18 AD3d 447).

PRUDENTI, P.J., ENG, BELEN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court