

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

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_____AD3d_____

Submitted - March 9, 2011

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
THOMAS A. DICKERSON
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-04718

DECISION & ORDER

Citimortgage, Inc., etc., plaintiff-respondent, v
Seibert R. Phillips, appellant, et al., defendants;
Snowflake, L.P., nonparty-respondent.

(Index No. 3904/09)

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

Katz & Rychik, New York, N.Y. (Bennett R. Katz of counsel), for plaintiff-respondent.

Schulman, Kissel & Keene, P.C., Suffern, N.Y. (Julian Alan Schulman of counsel), for nonparty-respondent.

In an action to foreclose a mortgage, the defendant Seibert R. Phillips appeals from an order of the Supreme Court, Rockland County (Jamieson, J.), entered April 2, 2010, which denied, without a hearing, his motion, in effect, pursuant to CPLR 5015(a)(4) to vacate a judgment of foreclosure and sale of the same court (Nelson, J.) entered September 9, 2009, upon his default in appearing or answering.

ORDERED that the order is affirmed, with one bill of costs.

The Supreme Court properly denied, without a hearing, the motion of the defendant Seibert R. Phillips (hereinafter the defendant), in effect, pursuant to CPLR 5015(a)(4) to vacate a judgment of foreclosure and sale on the ground of lack of jurisdiction. The affidavit of the plaintiff's

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process server constituted prima facie evidence of valid service upon the defendant of the summons and complaint pursuant to CPLR 308(1) (*see Prospect Park Mgt., LLC v Beatty*, 73 AD3d 885, 886). In response, the defendant offered only a bare and unsubstantiated denial of service, which was insufficient to rebut the presumption of proper service (*see Sturino v Nino Tripicchio & Son Landscaping*, 65 AD3d 1327; *96 Pierrepont v Mauro*, 304 AD2d 631).

Further, contrary to the defendant's contention, the plaintiff's alleged failure to comply with CPLR 3215(f) did not render the judgment a nullity, or warrant excusing his default (*see Araujo v Aviles*, 33 AD3d 830).

RIVERA, J.P., FLORIO, DICKERSON, HALL and ROMAN, 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