

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

D32864
N/nl

_____AD3d_____

Argued - October 4, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
RANDALL T. ENG
JEFFREY A. COHEN, JJ.

2010-08610

DECISION & ORDER

Wells Fargo Bank, N.A., etc., respondent, v Patrick
Bowie, et al., defendants, Fircy A. Nunez, etc., appellant.

(Index No. 4036/09)

Bailly and McMillan, LLP, White Plains, N.Y. (John J. Bailly of counsel), for
appellant.

Steven J. Baum, P.C., Amherst, N.Y. (Casey E. Callanan and Jason B. Desiderio of
counsel), for respondent.

In an action, inter alia, to foreclose a mortgage, the defendant Fircy A. Nunez appeals,
as limited by his brief, from so much of an order of the Supreme Court, Orange County (Slobod, J.),
dated June 21, 2010, as granted that branch of the plaintiff's motion which was for summary
judgment on the complaint insofar as asserted against him, and denied his cross motion pursuant to
CPLR 3211(a)(8) to dismiss the complaint insofar as asserted against him.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The defendant Fircy A. Nunez (hereinafter the appellant) took title to the real property
at issue in this matter, subject to the mortgage given by the defendant Patrick Bowie and held by the
plaintiff. The plaintiff subsequently brought this foreclosure action on that mortgage. The plaintiff
moved, inter alia, for summary judgment on the complaint insofar as asserted against the appellant,
and the appellant cross-moved pursuant to CPLR 3211(a)(8) to dismiss the complaint insofar as
asserted against him. The Supreme Court, among other things, granted the aforementioned branch
of the plaintiff's motion and denied the appellant's cross motion. The only contention asserted by
the appellant on this appeal is that the plaintiff was not entitled to summary judgment, and that the

November 15, 2011

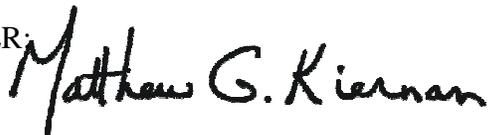
Page 1.

WELLS FARGO BANK, N.A. v BOWIE

Supreme Court should have dismissed the complaint, because service upon Bowie was not properly made. The appellant, however, lacks standing to contest the validity of service upon Bowie inasmuch as that claim is personal to Bowie, and thus may be raised, if at all, only by Bowie (*see NYCTL 1996-1 Trust v King*, 13 AD3d 429, 430; *NYCTL 1996-1 Trust v King*, 304 AD2d 629; *Home Sav. of Am. v Gkanios*, 233 AD2d 422, 423). Accordingly, the appellant's contention affords him no basis for relief. We note that the appellant does not claim on appeal that the plaintiff did not properly serve him with the complaint.

DILLON, J.P., BALKIN, ENG and COHEN, 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