

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

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Submitted - January 30, 2012

DANIEL D. ANGIOLILLO, J.P.  
JOHN M. LEVENTHAL  
LEONARD B. AUSTIN  
SHERI S. ROMAN, JJ.

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2009-08583

DECISION & ORDER

Deutsche Bank National Trust Company, etc.,  
respondent, v Eldon Dixon, defendant, Patrick  
Hollingsworth, appellant.

(Index No. 19036/07)

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Patrick Hollingsworth, Hollis, N.Y., appellant pro se.

Frenkel Lambert Weiss Weisman & Gordon, LLP, Bay Shore, N.Y. (Joseph F.  
Battista of counsel), for respondent.

In an action to foreclose a mortgage on real property, the defendant Patrick Hollingsworth appeals from an order of the Supreme Court, Queens County (Flaherty, J.), entered July 6, 2009, which denied, without a hearing, his motion pursuant to CPLR 5015(a)(4) to vacate a judgment of foreclosure and sale of the same court dated January 16, 2008, and entered upon his default in appearing or answering the complaint.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied, without a hearing, the motion of the defendant Patrick Hollingsworth (hereinafter the defendant) to vacate the underlying judgment of foreclosure and sale on the ground of lack of proper service of process. The defendant's conclusory denial of receipt of a copy of the summons and complaint was insufficient to rebut the presumption of proper service established by the affidavit of the plaintiff's process server (*see Countrywide Home Loans Servicing, LP v Albert*, 78 AD3d 983, 984-985; *City of New York v Miller*, 72 AD3d 726, 727; *Scarano v Scarano*, 63 AD3d 716).

March 6, 2012

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Further, contrary to the defendant's contention, the foreclosure and sale were not stayed by virtue of the filing of his third bankruptcy petition (*see* 11 USC § 362[c][4][A][i]).

The defendant's remaining contentions are without merit.

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN and ROMAN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court