

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART XXVII SUFFOLK COUNTY

PRESENT:

Honorable Ralph F. Costello

\_\_\_\_\_  
GMAC MORTGAGE, LLC.,

Plaintiff,

-against-

CLIFFORD SERAFINE; "JOHN DOE #1-5" and  
"JANE DOE #1-5" said names being fictitious, it  
being the intention of Plaintiff to designate any and  
all occupants, tenants, persons or corporations, if  
any, having or claiming an interest in or lien upon  
the premises being foreclosed herein,

Defendants.

PLAINTIFF'S ATTORNEY  
FEIN SUCH & CRANE LLP  
747 Chestnut Ridge Road - Ste 200  
Chestnut Ridge, NY 10977-6216

DEFENDANT'S ATTORNEY

\_\_\_\_\_  
Upon reading and filing the following papers relative to this matter: Plaintiff's ex parte application for an Order of Reference in Mortgage Foreclosure submitted to this Part on August 6, 2007 and the exhibits attached thereto; and now it is

**ORDERED** that this application is denied without prejudice to resubmit upon proper papers due to: (1) plaintiff's failure to obtain jurisdiction over the defendant Clifford Serafine; (2) failure to demonstrate plaintiff's ownership of the note and mortgage at issue when the case was commenced; and (3) plaintiff's failure to demonstrate compliance with the paper color requirements of RPAPL §1303; it is further

**ORDERED** that plaintiff is granted 120 days to reserve defendant Clifford Serafine; it is further

**ORDERED** that plaintiff is directed to serve a copy of this decision and order upon all appearing parties.

Plaintiff brings this application for appointment of a referee based upon two affidavits of service. One details the attempts to serve the summons, the complaint and the notice of

pendency while the other demonstrates the attempts to serve the notice required pursuant to RPAPL §1303. While serving the RPAPL notice separate and apart from the summons and complaint is a fatal defect, it appears that actual attempts at service of the documents were at the same time on the same date, and only delineated separately.

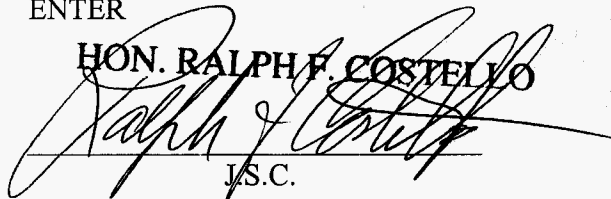
The attempts at service of all the documents, however, were insufficient to obtain personal jurisdiction as two of the three attempts were made at times that this defendant could be commuting from work or at work. Furthermore, no efforts appear to have been made to ascertain this defendant's place of employment. Accordingly, as service was made without the required exercise of due diligence pursuant to CPLR §308(4), no jurisdiction was obtained over this defendant (see *Waterman v. Jones*, \_\_AD3d\_\_ 843 NYS2d 462, 464-465 [2d Dept., 2007]). In addition, the Court notes that the submission failed to contain any explanation for the process server's decision to affix the papers to the door of the house in Shoreham, which is not the address of the mortgaged property in issue. Also, this plaintiff did not own or possess the note and mortgage when this action was filed and thus plaintiff lacked standing to bring the action. Finally, RPAPL §1303 requires that the "Help for Homeowners in Foreclosure" notice be printed on paper that is other than the color of the summons and complaint. Plaintiff has not demonstrated its compliance with this requirement.

Plaintiff is given leave to reserve defendant Clifford Serafine within 120 days of the date of this order as outlined above.<sup>1</sup>

The above constitutes the decision and order of this Court.

ENTER

HON. RALPH F. COSTELLO



J.S.C.

Dated: January 7, 2008

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<sup>1</sup>The Court notes that any service and subsequent default application must now be in compliance with the additional notice provisions of CPLR §3215(g)(3)(iii) and the requirements of RPAPL §1320.