

SCAN

**SHORT FORM ORDER**

**SUPREME COURT OF THE STATE OF NEW YORK**

**PRESENT: HON. DANIEL MARTIN**  
**Acting Supreme Court Justice**

**TRIAL/IAS, PART 39**  
**NASSAU COUNTY**

**FIRST TRUST NATIONAL ASSOCIATION**  
**AS TRUSTEE, 1993-16.**

**Plaintiff.**

**- against -**

**Sequence No.: 001**  
**Index No.: 000968/01**

**LAWRENCE KATZ, CIVIA KATZ, and "JOHN DOE #1", through "JOHN DOE #10", the last ten names being fictitious and unknown to the plaintiff, the persons or parties intended being the persons or parties, if any, having or claiming an interest in or lien upon the mortgaged premises described in the verified complaint.**

**Defendants.**

**The following named papers have been read on this motion:**

	<b>Papers Numbered</b>
<b>Notice of Motion and Affidavits Annexed</b>	<b>X</b>
<b>Order to Show Cause and Affidavits Annexed</b>	
<b>Answering Affidavits</b>	<b>X</b>
<b>Replying Affidavits</b>	<b>X</b>

Upon reading the papers submitted and due deliberation having been herein, defendants' motion to dismiss the complaint, pursuant to CPLR 3211(a)(8) and for attorney fees is denied.

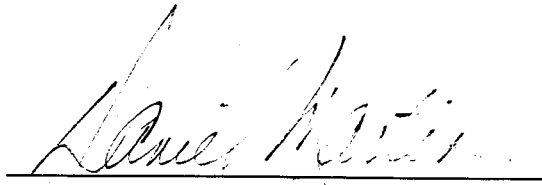
The plaintiff commenced this action to foreclose a mortgage. Defendants, by affidavit of defendant, Lawrence Katz, contends the individual served was only eleven years old. The affidavit of plaintiff's process server indicates defendant, Civia Katz, was served (see Exhibit B, annexed to plaintiff's affirmation in opposition).

A process server's affidavit indicating that a defendant in a civil action was served in accordance with the applicable statute constitutes *prima facie* evidence of proper service. (Fairmount Funding Ltd. v. Stefansky, 235 AD2d 213.) However, where there is a sworn denial of service by the party allegedly served, the affidavit of service is rebutted. (Rox Riv 83 Partners v. Ettinger, 276 AD2d 782.)

Here, defendant Civia Katz was allegedly served. Defendant Lawrence Katz's affidavit, alleging personal knowledge of the events does not rebut the process server's sworn affidavit of service on defendant Civia Katz.

So Ordered.

**Dated: June 12, 2001**



**A.J.S.C.**

**ENTERED**

**JUN 15 2001**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**