

SHORT FORM ORDER

SUPREME COURT-STATE OF NEW YORK

PRESENT:

HON. BRUCE D. ALPERT

Justice

TRIAL/IAS, PART 4

HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR FIRST
NLC TRUST 2005-3,

Motion Sequence No. 1

Plaintiff,

Index No. 11610/06

-against-

Motion Date: November 6, 2006

PAULA LAROSE, "JOHN DOES" and
"JANE DOES", said names being fictitious,
parties intended being possible tenants or
occupants of premises, and corporations, other
entities or persons who claim, or may claim,
a lien against the premises,

Defendants.

The following papers read on this motion for an Order of Reference:

Notice of Motion

X

Upon the foregoing papers it is ordered that the plaintiff's motion is denied,
and the action is dismissed for want of in personam jurisdiction over defendant,

Paula Larose..

The application is premised on the failure of the subject defendant to
interpose an answer to the plaintiff's complaint within the time frame

contemplated by CPLR 320.

Review of the applicable affidavit of service indicates that efforts were made to effectuate personal service upon her on four (4) occasions over a span of six (6) days. On the last occasion, a copy of process was purportedly affixed to the door of her residence and an additional copy thereafter transmitted by mail to the defendant at the service situs.

All but one (1) attempt to effectuate service, however, were made during normal business hours or at times when it could reasonably have been expected that the borrower was in transit to or from her place of employment.

“CPLR 308(4) authorizes ‘nail and mail’ service to be used only where personal service under CPLR 308(1) and (2) cannot be made with ‘due diligence’ (see O’Connell v Post, 27 AD3d 630; Simonovskaya v Olivo, 304 AD2d 553; Gurevitch v Goodman, 269 AD2d 355). ‘The due diligence requirement of CPLR 308(4) must be strictly observed, given the reduced likelihood that a summons served pursuant to that section will be received’ (Gurevitch v Goodman, *supra*).’ (Simonovskaya v Olivo, 304 AD2d 553, 553-554)” (County of Nassau v Letosky, ___ AD3d __, ___ NYS2d __, 2006 NY Slip Op 8083)

Although the unsuccessful efforts made to effectuate service of process at the defendant’s residence should have alerted the plaintiff to the need to

investigate further (see, County of Nassau v Yohannan, __ AD3d __, __ NYS2d __, 2006 NY Slip Op 8724), there is nothing in the record which suggests that the process server retained by the plaintiff made any effort to ascertain the defendant's place of employment and to effectuate service thereat pursuant to CPLR 308 (1) or (2). (see, Sanders v Elie, 29 AD3d 773; O'Connell v Post, 27 AD3d 630)

The apparent failure to do so is all the more perplexing inasmuch as the process server asserts that he communicated with one of Ms. Larose's neighbors in an effort to assure that the defendant was not in active military service.

DATED: December 26, 2006


J.S.C.

xxx

ENTERED

JAN 02 2007

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**