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2/28/89

CITY COURT OF THE CITY OF WHITE PLAINS
COUNTY OF WESTCHESTER : STATE OF NEW YORK

JOHN McFADDEN,

Petitioner,

-against-

DORIS L. SASSOWER and ELENA SASSOWER,

Respondents.

DECISION AND ORDER

L & T # 504/88

ARTHUR C. KELLMAN, J.

A traverse hearing was conducted by the Court on February 16, 1989, based upon the application by one of the respondents, Doris Sassower, to dismiss the petition in this summary proceeding upon the ground that service of the notice of petition and petition was not made in accordance with RPAPL Section 735.

The process server testified that on December 7, 1988, at 7:45 a.m., he gained admittance to the apartment building at 16 Lake Street, White Plains, by ringing the superintendent's bell. He then went to apartment 2C and rang the bell next to the entrance door of the apartment. A woman's voice answered, but did not open the door. He rang the bell 2 more times and waited approximately 10 minutes, but no one opened the door. He then "wedged" two copies of the notice of petition and petition in this proceeding between the door jam of the entrance door and left.

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The process server testified he did not affix the copies to the door but merely wedged them in the door jam.

The next day the process server mailed copies of the notice of petition and petition, in separately addressed envelopes to each of the respondents by certified mail and regular first class mail.

A summary proceeding, in derogation of the common-law and a creature of statute, requires strict compliance with the appropriate statutory requirements to confer jurisdiction.

Olivero v. Duran, 70 Misc.2d 882, 334 NYS2d 930.

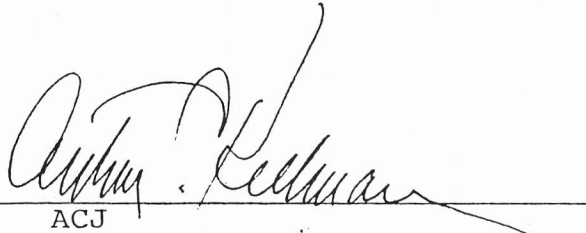
Under R.P.A.P.L. Section 735 three methods of service are available to confer jurisdiction. The first two methods are personal service and substituted service. Either may be selected, initially. The third method, conspicuous service, is to be utilized only if personal or substituted service cannot be obtained after reasonable application. Here, the process server met the reasonable application requirement by going to the apartment at 7:45 a.m. and by ringing the doorbell three times. During his effort to gain entry to effect service, a woman's voice responded to the bell but refused to open the door.

The process server then resorted to conspicuous service, so called nail and mail service. He thereupon wedged the papers to be served between the door jam and the door and thereafter mailed copies, as required by statute. However, Section 735 requires that the papers to be served must be affixed to the door.

It has been held that service under CPLR 308 (4), the general
mail and mail service provision, is not effected by squeezing the
papers to be served against the door knob. Norlee Wholesale Corp,
Inc. v. 4111 Hempstead Turnpike Corp., 138 AD 2d 466, 525 NYS 2d 873
(2d Dept. 1988). Affixing the papers to the door must be accomplished
by use of a nail, tape, tack, rubber band or some other device that
will ensure genuine adherance. PacAmOr Bearings, Inc. v. Foley,
92 AD 2d 959, 460 NYS 2d 662 (3d Dept. 1983).

Accordingly, service not having been effected upon
either respondent, the court never acquired jurisdiction. The
petition is dismissed without prejudice. This shall constitute
the order of the court.

Dated: White Plains, N. Y.
February 28, 1989


ACJ