

10 Misc.3d 1075(A)  
Unreported Disposition

(The decision of the Court is referenced in a table in  
the New York Supplement.)

Supreme Court, Richmond County, New York.

WELLS FARGO BANK MINNESOTA, National  
Association, as Trustee under the Pooling and  
Servicing Agreement Dated as of February 28,  
2001 Series 2001-A, Plaintiff(s)

v.

John ROMAN, April K. Roman, New York City  
Transit Adjudication Bureau, New York City  
Environmental Control Board Bureau, "John  
Does" and "Jane Does", Defendant(s).

No. 12086/04.

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Jan. 11, 2006.

### Opinion

ROBERT J. GIGANTE, J.

\*1 This motion to vacate a judgment of foreclosure and sale, and the sale itself, raises some issues of concern for consideration.

In seeking vacatur, defendant April K. Romano points to the affidavit of service of process filed in this case, which alludes to service upon one Christopher Romano. She avers that Christopher Romano is her eleven year old son (ten at time of the purported service), and thus cannot be considered a person of suitable age and discretion under [CPLR 308\(2\)](#). Plaintiff in opposition notes that the same affidavit describes Christopher Romano as approximately 23 years of age, 5'11" in height, and approximately 180 pounds, with three earrings in his right ear. In other words, hardly the description of a ten year old boy.

The discrepancies described above would ordinarily require a traverse hearing on the issue of whether, in fact, a ten year old boy was served (see, e.g. [Kopman v. Blue](#)

[Ridge Insurance Co.](#), 296 A.D.2d 479 (2d Dept.)). If so, the remaining question is whether that ten year old can be a person of suitable age and discretion as a matter of law.

It is settled that the person of suitable age need not be an adult. A responsible teenager, for example, will do. The criterion should be whether the person can be expected to advise the defendant of the service. ([Siegel, New York Practice, Section 72](#) (2d Ed.)). There appears to be no "bright-line" age below which a child is not a suitable person for service of process, even though "at some point a person *should* be deemed by the court, as a matter of law, to be too young to have a valid status as deliverer" ([Room Additions v. Howard](#), 124 Misc.2d 19 (emphasis added)).<sup>1</sup> The youngest person to have been declared as suitable for purposes of service under the CPLR, in the reported decisions found by the court, is twelve year old William Derrick Jr. ([Durham Productions Inc. v. Sterling Film](#), 537 F.Supp. 1241, 1244). However, an eleven year old was presumed as a matter of law not to be of suitable age ([Room Additions v. Howard](#), supra). Consequently, the court concludes that a ten year old is not of sufficient age and/or discretion to accept service on behalf of someone else. If it is ultimately determined that ten year old Christopher Romano was the individual served herein, the service is void, as are all subsequent proceedings against April Romano, as well as the sale to the third party purchaser.

<sup>1</sup> [Room Additions](#) construed a parallel service Statute, i.e. [RPAPL 735](#), which contains identical "suitable age" language as [CPLR 308\(2\)](#).

For these reasons, a traverse hearing shall be held in the issue of the identity of the individual served. It shall be conducted by a Judicial Hearing Officer to be appointed by separate order.

### All Citations

10 Misc.3d 1075(A), 814 N.Y.S.2d 893 (Table), 2006 WL 176959, 2006 N.Y. Slip Op. 50082(U)