



# Order Denying Leave to Serve by Publication and to Appoint a Guardian-Ad-Litem

Order Denying Substituted Service (02/2024)  
Page 1 of 1  
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Supreme Court

County of \_\_\_\_\_

Present: Hon. \_\_\_\_\_

\_\_\_\_\_

Plaintiff(s)

*-against-*

\_\_\_\_\_

Defendant(s)

Index Number:

\_\_\_\_\_

Property Address:

\_\_\_\_\_

\_\_\_\_\_

Before the court in this residential mortgage foreclosure action is plaintiff's motion for, among other things, an order pursuant to CPLR 315-316 and CPLR 1201-1202 allowing service by publication upon, and appointment of a guardian-ad-litem for, the unknown heirs of \_\_\_\_\_.

Where an intestate mortgagor's heirs cannot be identified and located through the exercise of due diligence, and plaintiff demonstrates that service pursuant to sections 1, 2, and 4 of CPLR 308 would be impractical, CPLR 308(5) and CPLR 315 authorize service by publication. Due diligence is measured by what is reasonable under the circumstances. \_\_\_\_\_.

In support of its motion, plaintiff presents an affirmation of due diligence of \_\_\_\_\_, dated \_\_\_\_\_, which reveals several deficiencies in plaintiff's efforts in identifying and locating the decedent's heirs:

Plaintiff has therefore failed to establish a need to serve decedent's unknown heirs by publication and/or to appoint a Guardian-Ad-Litem to represent their interests.

Accordingly, it is hereby

ORDERED that the motion is denied, without prejudice.

This constitutes the order of the court.

ENTER:

Dated: \_\_\_\_\_

\_\_\_\_\_

Judge Signature

