

DEUTSCHE BANK TRUST CO. AMERICAS V. VAN ROOYEN

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DEUTSCHE BANK TRUST COMPANY

AMERICAS, as Trustee,

Plaintiff-Appellee,

v.

**ROBERT M. VAN ROOYEN and
LISA P. MARSTON-VAN ROOYEN,**

Defendants-Appellants.

No. 32,341

COURT OF APPEALS OF NEW MEXICO

February 14, 2013

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Beatrice J.
Brickhouse, District Judge

COUNSEL

Modrall, Sperling, Roehl, Harris & Sisk, P.A., William R. Keleher, Jennifer L. Bradfute,
Albuquerque, NM, for Appellee

Albuquerque Business Law, P.C., Patrick J. Griebel, Heather S. Jaramillo, Albuquerque,
NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, CYNTHIA A.
FRY, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

Defendants/Appellants, Robert M. Van Rooyen and Lisa P. Marston-Van Rooyen, appeal from the district court's order denying Defendants' emergency motion to vacate default judgment and special master sale ("motion to vacate"). [DS 2, 5, RP 323] We issued a notice on January 7, 2013, proposing to summarily affirm. Defendants had twenty days from the date of service of this notice to serve and file a memorandum in opposition. Rule 12-210(D)(3) NMRA. Defendants have failed to file either a memorandum in opposition to our proposed summary disposition or a request for an extension of time. On January 28, 2013, Plaintiff/Appellee, Deutsche Bank Trust Company Americas, filed a memorandum in support of our proposed summary disposition. We have previously held that "[f]ailure to file a memorandum in opposition constitutes acceptance of the disposition proposed in the calendar notice." *Frick v. Veazey*, 116 N.M. 246, 247, 861 P.2d 287, 288 (Ct. App. 1993). Accordingly, we affirm the district court's denial of Defendants' motion to vacate.

IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

CYNTHIA A. FRY, Judge