

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D27223
Y/hu

_____AD3d_____

Argued - March 29, 2010

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2008-10913

DECISION & ORDER

Natalie Varriano, appellant, v Steering Wheel
Rentals, Inc., defendant, Son N. Trinh, respondent.

(Index No. 9377/97)

Robert C. Fontanelli, P.C., Brooklyn, N.Y. (Arnold DiJoseph of counsel), for
appellant.

Wilson Elser Moskowitz Edelman & Dicker, LLP, New York, N.Y. (Richard E.
Lerner of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from a judgment of the Supreme Court, Kings County (Jackson, J.), entered October 30, 2008, which, upon an order of the same court entered September 30, 2008, inter alia, in effect, granting the motion of the defendant Son N. Trinh to confirm the report of a referee (Kurtz, Ct. Atty. Ref.), dated July 1, 2008, which determined that service was not effected upon that defendant, and to vacate so much of a judgment of the same court (Belen, J.), entered January 19, 1999, as, upon the default of that defendant in answering the complaint or appearing in the action, and after an inquest, was in favor of that plaintiff and against that defendant in the principal sum of \$150,000, inter alia, in effect, vacated so much of the judgment entered January 19, 1999, as was in favor of the plaintiff and against that defendant, and dismissed the complaint insofar as asserted against that defendant.

ORDERED that the judgment is affirmed, with costs.

After a hearing, a referee issued a report in which she found that service of the summons with notice and the complaint had not been effected upon the defendant Son N. Trinh.

May 4, 2010

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Since that finding is supported by the record, the Supreme Court properly confirmed the referee's report (*see Shen v Shen*, 21 AD3d 1078, 1079; *Frater v Lavine*, 229 AD2d 564), and properly granted that branch of Trinh's motion which was pursuant to CPLR 5015(a)(4) to vacate so much of a judgment entered upon his default in appearing or answering as was in favor of the plaintiff and against him (*cf. Delgado v Velecela*, 56 AD3d 515, 516-517).

The plaintiff's remaining contentions have been rendered academic in light of our determination.

COVELLO, J.P., SANTUCCI, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court