

<b>Hyundai Mar. &amp; Fire Ins. Co., Ltd. v Vallejo</b>
2023 NY Slip Op 30150(U)
January 17, 2023
Supreme Court, New York County
Docket Number: Index No. 150408/2019
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

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HYUNDAI MARINE & FIRE INSURANCE CO., LTD.,

Plaintiff,

- v -

FRANCISCO VALLEJO, CRISTINO VALLEJO, and JOSE A. VALLEJO-CABRERA (PERTAINING TO AN UNDERLYING ACTION ENTITLED LUCRECIA PLACENCIO V. FRANCISCO VALLEJO),

Defendants.

INDEX NO. 150408/2019

MOTION DATE 09/03/2021

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for

DISMISSAL

ORDER

Upon the foregoing documents,

WHEREAS, this matter having come on before this court on September 3, 2021, on motion of the defendants Francisco Vallejo, Cristino Vallejo, and Jose A. Vallejo to vacate a default judgment against such defendants, who argue that this court lacks personal jurisdiction over them, and plaintiff having appeared by William J. Mitchell, Esq., and the defendants having appeared by Peter DeVries, Esq., and, pursuant to CPLR 4212, the court having on its own motion determined to consider the appointment of a referee to hear and report, and it

appearing to the court that an appointment is appropriate, it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this court on the following individual issue of fact, which is hereby submitted to the JHO/Special Referee for such purpose:

issue whether defendants were served process on February 19, 2019 at 216 Linwood Street, Brooklyn, New York, 10012, their dwelling place, by delivery of three copies each of same to "Ms. Perez", a person of suitable age and discretion at such premises;

and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless otherwise indicated; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another, and counsel for plaintiff shall, within twenty (20) days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the plaintiff and defendants of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the

manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this court thereon; and it is further

ORDERED that counsel are directed to appear via Microsoft Teams for oral argument on the fully submitted papers on the motion to confirm or disaffirm the Report of the Special Referee on April 26, 2023, 11:00 AM.

DECISION

This court disagrees with plaintiff that defendants' denial of service is conclusory and therefore insufficient to dispute the veracity or content of the affidavits of service of the process server. In fact, plaintiff's contentions, that attach certain material documentary evidence, that defendant Cristino Vallejo has submitted perjured statements that no one named or fitting the physical description of "Ms. Perez" was present

on the premises do not resolve but raise issues of credibility, which must be determined by a fact finder at a traverse hearing.

See Gass v Gass, 42 AD3d 393 (1<sup>st</sup> Dept 2007).

*Debra A. James*

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1/17/2023

**DATE**

**DEBRA A. JAMES, J.S.C.**

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE